76-468

Supreme Court, U. S.
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Supreme Court of the United States

OCTOBER TERM, 1976

No.

THE METROPOLITAN SCHOOL DISTRICTS OF LAWRENCE, WARREN AND WAYNE TOWNSHIPS, MARION COUNTY, INDIANA; THE METROPOLITAN SCHOOL DISTRICT OF DECATUR TOWNSHIP, MARION COUNTY, INDIANA; THE FRANKLIN TOWNSHIP COMMUNITY SCHOOL CORPORATION, MARION COUNTY, INDIANA, *Appellants,*

vs.

DONNY BRURELL BUCKLEY AND ALYCIA MARQUESE BUCKLEY, BY THEIR PARENT AND NEXT FRIEND, RUBY L. BUCKLEY, ON BEHALF OF THEMSELVES AND ALL NEGRO SCHOOL AGE CHILDREN RESIDING IN THE AREA SERVED BY THE ORIGINAL DEFENDANTS; UNITED STATES OF AMERICA, ET AL., *Appellees.*

APPEAL FROM, OR IN THE ALTERNATIVE, PETITION FOR WRIT OF CERTIORARI TO, THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

JURISDICTIONAL STATEMENT OR IN THE ALTERNATIVE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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INDEX.

PAGE

Opinions Below 2

Jurisdiction 2

Constitutional Provisions and Statutes Involved 3

Questions Presented 3

Statement of the Case 4

Why the Question Is Substantial or in the Alternative Why the Writ Should Be Granted 19

1. The opinion below squarely conflicts with and disregards *Washington* v. *Davis* and other prior decisions of this Court by predicating a Constitutional violation solely on the racial impact of statutes and governmental acts adopted and made without a racially discriminatory purpose—creating a new Constitutional duty prohibiting any governmental reform or remedial action which does not promote racial integration in the face of minority racial concentration 19

2. The opinion below, by predicating an interdistrict school violation on the failure of suburban civil officials to execute a cooperation agreement under the United States Housing Act of 1937, and by affirming a judicial decree restructuring the operation of eight independently governed school districts not implicated in the purported violation, conflicts with the decisions of this Court in James v. Valtierra and Hills v. Gautreaux with wide-ranging national consequences 26

3. The court below failed to follow the decisions of this Court by supplying findings of the facts necessary to establish a Constitutional violation—that but for events chargeable to the State, IPS would have expanded to the Marion County line—findings which the District Court refused to make after a hearing in which they were in issue 27

Conclusion 32

Appendix A1

Opinions Below:

Court of Appeals—majority A1

Court of Appeals—dissent A26

District Court—memorandum of decision A36

District Court—judgment A46

Judgment Sought to be Reviewed A51

Notices of Appeal:

The Metropolitan School Districts of Lawrence, Warren and Wayne Townships, Marion County, Indiana A52

The Metropolitan School District of Decatur Township, Marion County, Indiana A53

The Metropolitan School District of Franklin Township, Marion County, Indiana A54

Constitutional Provision:

United States Constitution, Fourteenth Amendment, § 1 ..... A55

Federal Statute:

42 U. S. C. § 1415 ..... A55

Indiana Statutes:

Indiana Acts 1961, Chapter 186 (School Annexation Statute) A56

Indiana Acts 1969, Chapter 52 (School Annexation Statute Amendment) A69

Indiana Acts 1969, Chapter 173 (Uni-Gov) ... A71

Indiana Acts 1969, Chapter 239 (Civil Annexation Statute) A80

Indiana Acts 1905, Chapter 129 as amended by Indiana Acts 1955, Chapter 269 (Pre-1969 Civil Annexation Statute) A88

Indiana Acts 1959, Chapter 202, as amended by Indiana Acts 1961, Chapters 231 and 302 (The School Reorganization Act) A96

CITATIONS.

Cases.

Bradford Electric Lights Co. v. Clapper, 284 U. S. 221 (1931) 3

Bradley v. Milliken, 484 F. 2d 215 (6th Cir. 1973), reversed 418 U. S. 717 (1974) 7, 23

Campbell v. City of Indianapolis, 155 Ind. 186, 57 N. E. 920 (1900) 15

Dandridge v. Williams, 397 U. S. 471 (1970) 25

Doran v. Salem Inn, Inc., 45 L. Ed. 2d 648 (U. S. 1976). 3

El Paso v. Simmons, 379 U. S. 497 (1965) 3

Evans v. Buchanan, 393 F. Supp. 428 (D. Del.), affirmed 46 L. Ed. 2d 293 (U. S. 1976) 21

Fort Wayne Comm. Schls. v. State ex rel. New Haven Public Schls., 240 Ind. 57, 159 N. E. 2d 708 (1959).. 8

Green v. The County School Board, 391 U. S. 430 (1968) 5

Harris v. City of Muncie, 325 N. E. 2d 208 (Ind. Ct. of App. 1975) 17

Hart v. Community Schl. Bd. of Brooklyn, N. Y. Schl. Dist. No. 21, 383 F. Supp. 699 (E. D. N. Y. 1974), aff'd 512 F. 2d 37 (2nd Cir. 1975) 27

Hawkins v. Town of Shaw, 437 F. 2d 1286 (5th Cir. 1971), affirmed on reh. en banc, 461 F. 2d 1171 (1972) 22

Higgins v. Bd. of Ed. of the City of Grand Rapids, 508 F. 2d 779 (6th Cir. 1974) 25

Hills v. Gautreaux, 47 L. Ed. 2d 792 (U. S. 1976)..23, 25, 27

Jefferson v. Hackney, 406 U. S. 535 (1972) 25

James v. Valtierra, 402 U. S. 137 (1971) 25

Katzenbach v. Morgan, 384 U. S. 641 (1966) 25

Indiana Code:

18-4-1 through 15 ..... A71
18-5-10 ..... A80
18-5-10-25 15
18-5-10-8 and 27 30
20-3-14 ..... A56
20-3-14-4, 9 and 10 ..... A69-A72
20-4-1 ..... A96
20-4-1-26(1) 15, A106

Publications.

HEW Education Directory, 1972-3, p. 255 12

Report of Statistical Information for Indiana School Corporations, published by Indiana Department of Public Instruction, 1971-72 11

Constitution.

Constitution of the United States:
Fourteenth Amendment, § 1 .....3, 4, 6

Statutes.

United States Code:
Title 28, § 1254(1) and (2) 3
Title 28, § 1343(3) 2, 6
Title 28, § 2103 3
Title 42, § 1415(7)(b)(i) 3, 4, 18, 25, A55
Title 42, § 1983 ..... 2, 5
Title 42, § 2000c(a) and (b) 2, 4

[1]Indiana Session Laws:
Acts 1859, Ch. 119 15
Acts 1865, Ch. 1 15
Acts 1905, Ch. 129 .....3, 15, A88
Acts 1955, Ch. 269 .....3, 15, A91, A93, A96
Acts 1959, Ch. 202 .3, 8, 12-13, 15, 20, 23, 28, 29, A96
Acts 1961, Ch. 186 .....3, 5, 7, 8, A56
Acts 1961, Ch. 231 .....3, A101
Acts 1961, Ch. 302 .....3, A106
Acts 1969, Ch. 52 .....3, 5, 7, 8, 17, 18, 28, 29, A69
Acts 1969, Ch. 173 .....3, 5, 7, 8, 16, 20, A71
Acts 1969, Ch. 239 .....3, 15, 17, A80

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1. Through 1969, Indiana session laws are printed and cited by the year adopted as a "chapter". Permanent statutes were codified as of the beginning of Indiana's 1971 legislative session as "Indiana Code, 1971". Subsequent permanent legislative enactments were adopted as amendments to this code. The 1971 Code, as amended through 1975, was readopted in 1976 as a restatement of Indiana law entitled "Indiana Code" and cited "IC .....". Burn's Indiana Statutes Annotated, an unofficial publication, now uses the Indiana Code numbering system. Session laws are set out in the Appendix to reflect the applicable wording in 1969 and prior years.

the judgment and opinion of the United States Circuit Court of Appeals for the Seventh Circuit entered July 16, 1976.[2]

OPINIONS BELOW.

The majority and dissenting opinions of the United States Court of Appeals for the Seventh Circuit and the Memorandum of Decision and Judgment of the United States District Court for the Southern District of Indiana are not yet reported. Copies are set out in the Appendix at A1 and A36, respectively.

JURISDICTION.

Jurisdiction of the District Court in this case is based on §§ 407(a) and (b) of the Civil Rights Act of 1964, 42 U. S. C. §§ 2000c-6(a) and (b), and on 42 U. S. C. § 1983 and 28 U. S. C. § 1343(3), as more fully set out in the "Statement of the Case."

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2. Appellants are named in the caption. Appellees include: (1) The following parties whose positions are or may be adverse to appellants: Donny Brurell Buckley and Alycia Marquese Buckley, by their parent and next friend, Ruby L. Buckley, on behalf of themselves and all Negro school age children residing in the area served by the original defendants. (2) The following parties whose positions the appellants do not know: United States of America; The Board of School Commissioners of the city of Indianapolis, Indiana, its Superintendent and its Members, Indiana State Teachers Association. (3) The following parties whose positions are believed to be similar to appellants: The Metropolitan School District of Perry Township, Marion County, Indiana; The Metropolitan School District of Pike Township, Marion County, Indiana; The Metropolitan School District of Washington Township, Marion County, Indiana; School City of Beech Grove, Marion County, Indiana; School Town of Speedway, Marion County, Indiana; The Metropolitan Development Commission of Marion County; Citizens for Quality Schools, Inc.; Otis R. Bowen, as Governor of the State of Indiana; Theodore Sendak, as Attorney General of the State of Indiana; Harold H. Negley, as Superintendent of Public Instruction of the State of Indiana; and The Indiana State Board of Education, a public corporate body. (4) The Housing Authority of the City of Indianapolis, which appellants believe will be submitting a separate petition for writ of certiorari.

The judgment of the Court of Appeals was entered July 16, 1976. No petition for rehearing was filed. This appeal was filed within ninety (90) days of that date. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(2), or in the alternative, under 28 U. S. C. §§ 1254(1) and 2103. Cases believed to sustain jurisdiction on appeal are the following: *Watson* v. *Employers Liability Assurance Corp.*, 348 U. S. 66, 70 (1954); *El Paso* v. *Simmons*, 379 U. S. 497, 502-503 (1965); *Doran* v. *Salem Inn, Inc.*, 45 L. Ed. 2d 648, 657 (U. S. 1976); *Bradford Electric Light Co.* v. *Clapper*, 284 U. S. 221 (1931).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

The Indiana statutes whose validity is involved are Acts 1969: Ch. 52, pp. 57-58; Ch. 173, pp. 357-448, and Ch. 239, pp. 894-922, which are set forth in pertinent part in the Appendix. The other constitutional provisions and Indiana statutes relevant to the issues in this case are: United States Constitution Amendment 14, § 1; 42 U. S. C. § 1415(7)(b)(i); and Indiana statutes as follows: Acts 1959, Ch. 202, pp. 451-474, as amended by Act 1961, Ch. 231, pp. 544-552, and Ch. 302, pp. 816-827; and Acts 1961, Ch. 186, pp. 431-442; and Acts 1905, Ch. 129, pp. 219-410, as amended by Acts 1955, Ch. 269, pp. 720-726, which are set forth in pertinent part in the Appendix.

QUESTIONS PRESENTED.

1. Whether the Indiana General Assembly, by enacting a statute in 1969 (Uni-Gov) for the rational and racially neutral purpose of reorganizing certain civil governmental entities in Marion County and extending some former Indianapolis Civil City functions to the Marion County line, violated the Fourteenth Amendment rights of black children in the Indianapolis Public School System (IPS), an independent governmental

entity, by not simultaneously enacting legislation expanding IPS' boundaries to encompass all of the other ten independent school districts in Marion County.

2. (a) Whether the failure prior to 1970 of civil governmental agencies outside the Indianapolis Civil City without a racially discriminatory motive to enter into cooperation agreements under the United States Housing Act of 1937, as amended (42 U. S. C. § 1415(7)(b)(i)), and the resulting inability of The Housing Authority of the City of Indianapolis (HACI) to locate any public housing project outside IPS violated the Fourteenth Amendment rights of black children in the IPS schools.

(b) Whether HACI's failure to locate public housing projects outside IPS, if constituting a violation, warrants an interdistrict school remedy restructuring the operation of eight independent school districts in Marion County, none of which are implicated in the violation.

3. Whether the Court of Appeals erred in supplying a finding of fact necessary to establish a constitutional violation—that but for events chargeable to the State, IPS would have expanded to the Marion County line—a finding which the District Court refused to make after hearing.

STATEMENT OF THE CASE.

The United States commenced this action in 1968 under §§ 407(a) and (b) of the Civil Rights Act of 1964, 42 U. S. C. §§ 2000c-6(a) and (b), against The Board of School Commissioners of the City of Indianapolis, Indiana (IPS), an independent governmental entity, the then only defendant, where the "sole issue" was racial segregation within IPS. By order entered August 18, 1971, the District Court found IPS was ". . . operating a segregated school system wherein segregation was imposed and enforced by operation of law, . . ." (332 F.

Supp. 655, at 677, 678). This judgment was affirmed on appeal on February 1, 1973, 474 F. 2d 81, and certiorari was denied June 25, 1973, 413 U. S. 920.

With respect to remedy, the District Court in a theme recurring in each of its later decisions noted that it could order "exact racial balancing" in each IPS school but declined to do so stating "in the long haul it won't work," within the meaning of *Green* v. *The County School Board*, 391 U. S. 430 (1968), since the "tipping point" triggering "white flight" which the Court placed at 40% black students in any school might "be reached and passed beyond retrieve." (332 F. Supp. at 676, 678; see also, 368 F. Supp. at 1197, 1205; and A44) The Court, however, evinced an interest in using Uni-Gov as a means of achieving the degree of racial balance necesary to avoid the "white flight" problem observing that "the tipping point/resegregation problem would pale into insignificance if the Board's jurisdiction were coterminous with that of Uni-Gov" and would be minimized still further if extended to Lawrence, Beech Grove, Speedway City, and to certain parts of adjoining counties (332 F. Supp. at 679). Uni-Gov (Acts 1969, Chapter 173), was a reorganization of certain civil governmental entities and operations in Marion County, extending some, but not all, of the Indianapolis Civil City functions to all of Marion County. The District Court then set out the following questions necessary to final disposition of the case (Id., at 679):

> "1. Are Chapter 186 of the Acts of 1961, Chapter 52 of the Acts of 1969, and Chapter 173 of the Acts of 1969, or any of them, unconstitutional as tending to cause segregation or to inhibit desegregation of the Indianapolis School System?
>
> 2. If the answer to Question 1 is in the affirmative, did passage of the Uni-Gov Act automatically extend the boundaries of the School City coterminous with the boundaries of the Civil City, as provided generally by Indiana law?

> 3. If both of the foregoing questions are answered in the affirmative, are Lawrence, Beech Grove, and Speedway City presently under the jurisdiction of the defendant Board, or does Uni-Gov merely have the effect of annexing the eight township school corporations?"

The District Court ordered the United States to join as party defendants the necessary municipal and school corporations having an interest in the above and other questions together with certain state defendants.

On September 7, 1971, the United States moved to add certain school corporations as additional party defendants, including appellants, but never, then or later, filed a complaint asserting a claim for relief against them.

On September 14, 1971, the District Court allowed Donny Brurell Buckley and Alycia Marquese Buckley to intervene as plaintiffs representing a class of school age Negro children and to file a complaint seeking relief against the added defendant school corporations. Jurisdiction was based on 42 U. S. C. § 1983 and 28 U. S. C. § 1343(3). By an amended complaint filed October 21, 1971, appellees Buckley, brought into the action as added defendants, Indiana's Governor, Attorney General, Superintendent of Public Instruction and State Board of Education, and nineteen suburban school corporations, including the petitioners. The amended complaint framed the issues relating to Uni-Gov posed by the District Court, as follows:

> "9. By their present method of maintaining and operating separate school corporations, the defendants have effected racial segregation and discrimination in the operation of public schools and school systems serving Marion County, Indiana, and the Indianapolis metropolitan area, in violation of the rights secured to plantiff-intervenors by the Fourteenth Amendment to the Constitution of the United States and Article VIII, Section 1, of the Constitution of Indiana.

* * * * *

> "10. Section 314 of Chapter 173 of 1969, Burns' Ind. Stat. Ann. § 48-9213 (1970 Cum.Supp.), which chapter is known as the 'Consolidated First Class Cities and Counties Act' is unconstitutional and void insofar as it purports to exempt from the scope and effect of said act the consolidation of all school corporations within Marion County, Indiana. The purpose and effect of such exemption, as further implemented and enabled by the provisions of Chapter 186 of the Acts of 1961, Burns' Ind. Stat. Ann. §§ 28-2338 to 28-2347 (1968 Cum.Supp.) and Chapter 52 of the Acts of 1969, Burns' Ind. Stat. Ann. § 28-2346a (1970 Cum. Supp.) have been and are to perpetuate segregation on the basis of race and to inhibit desegregation in the public schools and school systems of Marion County."

The case against appellants and the other added defendants, framed by the issues set up by the amended complaint and answer to it, was tried in the District Court in June and July, 1973, raising the constitutionality of the purpose and effect of Uni-Gov, Acts 1961, Chapter 186, and Acts 1969, Chapter 52.

On July 20, 1973, the District Court filed its memorandum of decision (368 F. Supp. 1191) ordering interim interdistrict relief involving school districts both in Marion and surrounding counties similar to that here in issue. The District Court reiterated its 1971 conclusion that a complete desegregation in IPS on a 58.9%—41.1% white-black ratio would create white flight "so that IPS would predictably have a black majority within two or three years", that such a plan would not "work", that desegregation with a lesser percentage of whites would leave some schools in IPS identifiably black accelerating white flight from these schools (*Id.*, at 1198). The Court stated that State approval of school sites within IPS constituted *de jure* segregation by State officials and based its decision on the Sixth Circuit opinion in *Bradley* v. *Milliken*, 484 F. 2d 215 (1973), *reversed* 418 U. S. 717 (1974), which it asserted, raised identical questions to those here presented (*Id.*, at 1202-1203).

An appeal was taken from this judgment to the Court of Appeals which entered its decision on August 21, 1974 (503 F. 2d 68), holding:

> "In accordance with *Milliken* v. *Bradley*, 418 U.S. 717, 94 S.Ct. 3112, 41 L.Ed.2d 1069 (1974), we reverse the district court's findings, conclusions, orders and rulings insofar as they pertain to a metropolitan remedy beyond the Uni-Gov boundaries; insofar as they pertain to a remedy within the boundaries of Uni-Gov, we vacate those rulings and remand for further proceedings consistent with that decision. The district court should determine whether the establishment of the Uni-Gov boundaries without a like reestablishment of IPS boundaries warrants an inter-district remedy within Uni-Gov in accordance with *Milliken*." (footnotes omitted) (503 F. 2d at 86.)

The District Court in its 1971 opinion, in the absence of any evidence or briefing by the then parties to the suit, postulated a complex theory of the unconstitutional effects of the 1961 and 1969 statutes, including Uni-Gov, as a basis for the questions to be determined in a later hearing with the additional parties. This theory was based on the assumed coterminous nature of school and civil boundaries in Indiana prior to 1961 and the purported change in this relationship effected by these statutes. The analysis was substantially incorrect since the District Court did not then realize that The School Corporation Reorganization Act (Reorganization Act) (Acts 1959, Chapter 202) mandated a procedure for establishing fixed school boundaries independent of those of any civil municipal corporation, that the legality of this independence had been judicially approved for consolidations prior to the passage of the Reorganization Act,[3] that boundaries of the added school defendants were established under this procedure generally in 1961 and 1962, that the intent of the 1961 Act was to give the Marion County school corporations a degree of flexibility which did not exist under the

3. *Fort Wayne Comm. Schls.* v. *State ex rel. New Haven Public Schools*, 240 Ind. 57, 159 N. E. 2d 708 (1959).

Reorganization Act, and that both the Reorganization Act and Uni-Gov were adopted for rational governmental purposes without a discriminatory racial motive. The District Court's postulation, however, formed the substance of appellees Buckley's amended complaint on which the 1973 hearing was based.

In its 1973 decision, the District Court abandoned its 1971 analysis of Indiana law, holding that "in view of the Court's other findings and conclusions, it is unnecessary to consider the unconstitutionality . . . [of these 1961 and 1969 acts]." (368 F. Supp. at 1208) The District Court never explained this abandonment. It made a reference in the early part of its 1973 opinion to "a quibble about the effect of certain school laws passed in 1961 and thereafter" which the Court asserted "will be further reviewed hereafter." (*Id.*, at 1199) This review was not made and this failure led the Court of Appeals in its 1974 opinion to repeat the District Court's 1971 flawed statutory analysis as a substantially correct statement of Indiana's law relating to school district boundaries. (503 F. 2d at 72) This analysis was not essential to the Court of Appeals holding in 1974 and was substantially altered by the 1976 Court of Appeals decision here in issue.

The District Court after remand on December 13, 1974, made a pre-trial entry setting out the issues to be tried, as follows:

> "2. After discussion, the Court stated that the remaining issues appeared to be, at a minimum, the following: (a) The *effect, if any,* of the passage of the 'Uni-Gov' Act in perpetuating de jure segregation within the boundaries of IPS, and (b) the *effect, if any,* of housing and zoning laws, rules, regulations, and customs in Marion County, Indiana, and its various political subdivisions upon the de jure segregation of IPS." (Emphasis added.)

The case, on remand, was tried in the District Court in March, 1975. The District Court filed its Memorandum of Decision on August 1, 1975. With respect to the Uni-Gov issue, the District Court held:

"The evidence clearly shows that at the time of the passage of the Uni-Gov Act in 1969, various annexation plans and school consolidation plans had bogged down on the local level because of the aforementioned opposition of the suburban school corporations within Marion County, and their patrons. However, the General Assembly of Indiana, with its members elected on a state-wide basis, was not, or should not have been, subservient to local pressures, and undoubtedly could have legislated a county-wide school system for Marion County as easily as it legislated a county-wide civil government. Under existing law, both Federal . . . and the law of Indiana . . . it had a duty to alleviate the segregated condition then existing in IPS. When the General Assembly expressly eliminated the schools from consideration under Uni-Gov, it signaled its lack of concern with the whole problem and thus inhibited desegregation with [sic] IPS.

"The Court finds that the establishment of the Uni-Gov boundaries without a like re-establishment of IPS boundaries, given all of the other facts and circumstances set out in this and former opinions of this Court, warrants a limited inter-district remedy within all of Marion County, Indiana, as hereafter described." (A40-A41.)

With respect to remedy, it also made a series of additional findings reminiscent of its 1971 and 1973 opinions:

"A unitary school system within the meaning of such amendment cannot be implemented within the boundaries of IPS. 'In the long haul, it won't work.' 332 F. Supp. at 678." (A42.)

* * * * *

". . . As stated above, this Court has previously found that to require all schools to enroll about 42.43% black pupils would immediately accelerate white flight and unbalance the entire system beyond saving. The Court respectfully declines to stultify itself by giving any such direction.

"The Metropolitan School Districts of Washington Township and Pike Township are integrating rather rapidly, as a result of demographic changes, so that Washington had a

> black percentage of approximately 15% and Pike a black percentage of approximately 12% for the past school year. These percentages seem likely to increase for the coming year. If the percentage of black students in the other suburban districts within Marion County were equivalent to that of Washington Township, approximately 9,525 black students would need to be transferred to such districts. The Court finds that the Fourteenth Amendment compels it to order IPS to transfer, and for the added defendant school corporations, other than Pike and Washington, to receive approximately such number of black students, over a period time, in order to effect a plan of desegregation within IPS which is acceptable within the meaning of such amendment." (A44).

Simultaneously with the filing of its Memorandum of Decision on August 1, 1975, the District Court entered judgments against the eight school corporations, including the appellants, to accept transfers of students from IPS (A47-A50). The Court of Appeals stayed these judgments on August 22, 1975.

By a 2-1 decision entered July 16, 1976, Circuit Judge Tone dissenting, the Court of Appeals affirmed the District Court's judgments. The Court of Appeals stayed the issuance of its mandate until August 23, 1976. The mandate was further stayed by an order of this Court entered August 20, 1976.

The overall factual background consists primarily of matters of Indiana law and undisputed facts and is reasonably clear.

The Marion County School Corporations. IPS is the largest school system in the State with a 1974-1975 enrollment of 77,732 students, at least 30,000 larger than the next largest school corporation. IPS is surrounded in Marion County by 10 school districts, 5 of which are among the 25 largest in the State and no one of which is below the median size of the 305 school corporations in Indiana.[4] IPS is now the 29th largest

4. Report of Statistical Information for Indiana School Corporations, published by Indiana Department of Public Instruction, 1971-1972.

school corporation in the Nation. A consolidated Marion County system would be the 10th largest in the United States and would contain 14% of all students enrolled in Indiana public schools.[5]

Racial Imbalance. IPS has a much higher percentage black population and school enrollment than any other Marion County school corporation. Two suburban school districts, however, The Metropolitan School Districts of Washington and Pike Townships, have growing black populations, with black enrollments of 15% and 12%, respectively, in the 1974-1975 school year (A44). The District Court entered no judgment against them although the operative facts applied with equal force. The boundaries of IPS and the other ten school districts are relatively stable. An absorption by IPS of all, or in some cases part, of any of the suburban school districts would increase the ratio of white to black residents and students in IPS.

Only IPS, and no other school corporation, has been found guilty of segregation within its districts (332 F. Supp. at 659, 677-678). The District Court found that none of the added school defendants, including appellants, were guilty of any segregatory acts in the operation of their respective school districts, nor is there any suggestion they are responsible for the segregation existing in IPS from a date predating 1954 (368 F. Supp. at 1203). The 1971 finding of segregation within IPS is not predicated on interdistrict acts—those occurring or caused by governmental acts outside IPS.

School Reorganization. The boundaries of the Marion County school corporations were established under the Reorganization Act (A96). This Act established a county committee in each Indiana county and required it to adopt preliminary and final plans for the reorganization of school corporations which would incorporate all of the areas in the county into one or more school corporations providing efficient and adequate edu-

5. HEW Educational Directory, 1972-1973, p. 255.

cational programs for the pupils in grades 1-12 (A99) meeting minimum standards adopted by the state commission also established under the Reorganization Act (A102).

The creation of a school corporation under this Act required a final plan approved by the county committee and by the state commission (A100 and A103), and in the event the plan established new district lines, an affirmative majority vote in an election or equivalent voter approval by petition in each proposed reorganized district (A103-A104). While the net result of the many plans was consolidation, the purposes of the Reorganization Act could be carried out either by consolidation of districts, splitting of districts, or transfer of territory from one to another (A97-A98). The purpose of the statute was reorganization of school corporations into efficient units and not the creation of large school corporations, the failings of which are well documented nationally.

Many of the larger counties in Indiana emerged from reorganization with a substantial number of school districts. Lake County, Indiana's second largest county after Marion County, has 16 school districts with a smaller total county-wide enrollment. Of the counties surrounding Marion County, three were organized with six districts, three with four districts, and one with three districts, the largest of such counties having an enrollment of 16,344 compared with a total Marion County enrollment of 179,810.[6]

In Marion County, the Marion County Reorganization Committee preliminarily proposed a single county-wide school corporation. After a hearing in 1961, this plan was abandoned because of "the unanimous opposition of the suburban school districts" the plan having " 'no widespread support—only organized opposition,' " (A13). A plan providing for the continuance of the eleven school districts was adopted as the final county plan—a plan approved by the state commission. The undisputed evidence established not only that the preliminary

6. See note 4, *supra*.

county unit plan had no wide-spread support, but that it lacked the encouragement of editorial support by any news media or the unqualified endorsement of any significant civic or school organization and that there was an apparent substantial community consensus for maintaining eleven of the existing school units, all of which were growing school corporations with enrollments well above the prescribed minimum of 1,000 students. There was no evidence that in 1961, or at any time since, a majority of the patrons of either IPS or the very many large school districts surrounding IPS, both inside and outside Marion County, would ever have voted for inclusion in a monster school district.

There is no evidence that the opposition to a county unit plan was racially motivated, the Court of Appeals noting the following:

> ". . . [T]he unanimous opposition of the suburban school districts defeated the merger proposal. There is no evidence that this opposition was racially motivated. . . ." (A13)
>
> • • • • •
>
> "The most substantial reasons against consolidation noted in the Committee's report were that a consolidated school district would be large, with consequent loss in citizen participation and interest in school affairs, and that merger would result in increased school taxes in IPS and two of the suburban districts. The Committee explained that the consolidation plan 'had no widespread support—only organized opposition,' and that it did not wish to 'force a plan (however sound in its conception) upon an unwilling or reluctant public.' . . ." (A13)
>
> • • • • •
>
> ". . . As we noted earlier, the most substantial reasons advanced against the consolidation of the schools in Marion County when it was under consideration in 1959 were that a consolidated school district would be large, with consequent loss of citizen participation, and that it would increase taxes. These considerations, although apparently not racially motivated, cannot justify legislation that has an obvious racial segregative impact. . . ." (A19).

Marion County School Boundaries Prior to 1969. Indiana local public school corporations have always been independent units of government. This is true under the Reorganization Act (IC 18-4-1-26(1); A106) and under the 1859 and 1865 Acts which it replaced.[7] The purpose of the Reorganization Act was to establish school corporations, without regard to civil government considerations, with boundaries which could provide an efficient and adequate educational system for each of the children in grades 1-12 in each county (A99). As a result of the Reorganization Act, school boundaries in the State were frozen, at least 70% not coterminous with boundaries of civil units of government (A13). In 1961, the Indiana General Assembly adopted special legislation to give schools within Marion County flexibility lost by reorganization (*Ibid.*). This Act, applying only to Marion County, permitted a transfer of territory by mutual agreement between school corporations and unilateral annexation by IPS, Beech Grove, and Speedway school corporations subject to remonstrance by the school district losing territory (A14-A15). Section 9 provided that a civil school annexation by a civil city (Indianapolis, Beech Grove or Speedway), would also effect a school annexation unless the involved school corporations otherwise agreed, or unless the school corporation losing territory filed a remonstrance action against the annexation (A14). The 1961 statute is set out in the Appendix at A56. Civil annexation had always been additionally subject to the remonstrance of individual landowners under civil annexation laws[8] which had generally operated irrationally and since 1961 had caused annexation to cease (maj. op. A14-A15; dissent. op. A30, n. 5); and "the annexation powers of the city . . . proved to be illusory," (A14). The Court of Appeals found

7. Acts 1859, Ch. 119, § 1; Acts 1865, Ch. 1, § 4. *See, Campbell* v. *City of Indianapolis,* 155 Ind. 186, 57 N. E. 920 (1900).

8. Indiana Acts 1905, Ch. 129, § 243, as last amended by Acts 1955, Ch. 269, § 3, set out in the Appendix at A93, governed this process until superseded by Acts 1969, Ch. 239, § 407 (IC 18-5-10-25), set out at A86.

"the policy of the State, as expressed in the 1961 legislation, was that IPS *would expand* along with the city." (A15; emphasis added.) "Could expand" is a more accurate characterization, since in fact, the boundaries of IPS and the civil city were not coterminous on January 1, 1970, the effective date of Uni-Gov.

Uni-Gov. With respect to Uni-Gov, the Court of Appeals findings are comparable to those with respect to reorganization:

> "Uni-Gov is governed by a mayor and council. Its purpose was to efficiently reorganize civil government within Marion County. Previously, there had been a splintering of governmental responsibility into loosely controlled agencies with overlapping jurisdictions. Uni-Gov has succeeded to most of the functions of county government and of numerous special service districts. It has also succeeded to the functions of the city of Indianapolis and provides municipal services such as police and fire protection within the approximate area of the old city. The Act contains provisions for expanding the areas in which Uni-Gov delivers these municipal services. *See, e.g.*, I.C. 1971, 18-4-12-36 (fire district); I.C. 1971, 18-4-12-8 (police district).
>
> "Uni-Gov has not, however, replaced all existing governmental units in Marion County. For example, the airport authority, the county courts, the building authority, and the hospital corporation were excluded from Uni-Gov. The so-called 'excluded cities' of Speedway, Perry, [sic] and Lawrence retain their own local governments which provide municipal services in those areas. Nonetheless, Uni-Gov has significant powers even in the excluded cities. It is in charge of air pollution regulation, building code enforcement, and municipal planning and thoroughfare control. Moreover, the citizens of the excluded cities vote in Uni-Gov elections." (A10)
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> * * * * *
>
> "Although Uni-Gov was a neutral piece of legislation on its face with its main purpose to efficiently restructure civil government within Marion County, it cannot be analyzed in isolation if its impact on school district boundaries is to be clearly perceived. . . ." (A17-A18)

Not only was Uni-Gov non-racial in its purposes, but it is buttressed by three legislative studies which preceded it in 1952, 1964 and 1966. Uni-Gov is misdescribed as an extension of "full city services" to the county line (A21). In fact many city services had been thus expanded prior to Uni-Gov while others were organized under Uni-Gov in special taxing or service districts with no immediate geographical expansion (A10). Uni-Gov's purpose, as the Court of Appeals notes, was to reorganize and centralize executive and legislative control and, therefore, effective responsibility over a welter of existing governmental agencies (A10) with differing geographical jurisdictions.

Companion Legislation. "Companion legislation" considered by the Court of Appeals in conjunction with Uni-Gov consisted of two other 1969 Acts: Chapter 52 and Chapter 239. Chapter 52 (A18) repealed Section 9 of the 1961 Act which, as noted above, provided for extension of school boundaries with civil city annexation subject, however, to a contrary agreement by the involved school corporations, or a remonstrance by the school corporation losing territory. Chapter 239 was not an issue at the trial and was raised for the first time by the Court of Appeals. It replaced the existing law which governed statewide civil city annexations and remonstrances to them by individual landowners. As the Court of Appeals noted, "limiting remonstrance against municipal annexations to a few simple fairly objective grounds." (A18) There was no evidence, however, that remonstrance was less difficult under this statute, and Chapter 239 arguably places a substantially greater burden on a civil city than the prior law in seeking an annexation over a remonstrance.[9] Both Chapters 52 and 239 were rendered inoperative in Marion County on January 1, 1970, the effective date of Uni-Gov.

These 1969 Acts were characterized by the Court of Appeals as:

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9. *See, Harris* v. *City of Muncie,* 325 N. E. 2d 208 (Ind. Ct. of App. 1975), and *York* v. *Town of Carmel,* 337 N. E. 2d 511 (Ind. Ct. of App. 1975).

> ". . . '[F]ail safe' measures [indicating] a legislative intent (reflecting local sentiments that by one means or another the boundaries of IPS would not expand with those of the civil city. . . ." (A18)

The Court of Appeals did not, however, characterize this intent as racially discriminatory. (See dissent, op. A31, n. 6). Further, linking the passage of Uni-Gov and Chapter 52 as part of a legislative plan is contrary to the undisputed evidence. The philosophic and civic genesis of Chapter 52 antedated Uni-Gov by two years and had its separate legislative history. Legislation identical to Acts 1969, Chapter 52, was introduced in the 1967 General Assembly as H. B. 1188, and passed both Houses but was vetoed by Governor Branigan. When the bill was reintroduced in the next General Assembly, it was again passed and was signed by Governor Whitcomb on February 25, 1969.

Public Housing. In the period prior to 1970, The Housing Authority of the City of Indianapolis, Indiana (HACI) located ten housing projects within the then limits of the City of Indianapolis, limits which were then similar to those of IPS. These projects are tenanted largely by black families, but were built primarily in areas of predominantly white population. The projects were not built outside the Civil City limits of Indianapolis prior to 1970 because "the municipality or other civil governmental entity having jurisdiction over the territory" failed to enter into cooperation agreements with HACI obligating them to provide essential services, services required by HUD guidelines (A11). Execution of such agreements, however, is a prerequisite to Federal financing of public housing under the United States Housing Act of 1937, 42 U. S. C., § 1415(7)(b)(i) and the HUD guidelines thereunder. HACI lacked funds to construct such housing without Federal funding. The Court of Appeals, quoting the District Court, stated (A23):

> ". . . 'The location of these housing projects by instrumentalities of the State of Indiana has obviously tended

> to cause and to perpetuate the segregation of black pupils in IPS territory.' The record supports these findings and clearly shows a 'purposeful, racial discriminatory use of state housing.' *Milliken* v. *Bradley*, 418 U. S. 717, 755 (1974) (Stewart, J., concurring)."

There was no finding by the District Court and no evidence that the refusal to execute cooperation agreements or the location of the housing projects was racially motivated. It ruled out the necessity of such a finding in stating the issues (see p. 9, *supra*), and its ultimate finding was stated purely in terms of effect. A fair reading of the Court of Appeals opinion, despite the language set out above, is to the same effect:

> "By locating its projects within IPS and in many cases near all black neighborhoods, the Housing Authority significantly contributed to the disparity in residential and school populations between the inner city and the suburbs. Its acts produced discriminatory effects both within IPS and the suburbs. . . ." (A24)

None of the ten school corporations outside IPS were involved, or were found by the opinion below to be involved, in any way with the location or construction of public housing projects.

WHY THE QUESTION IS SUBSTANTIAL OR IN THE ALTERNATIVE WHY THE WRIT SHOULD BE GRANTED.

1. The opinion below squarely conflicts with and disregards Washington v. Davis and other prior decisions of this Court by predicating a constitutional violation solely on the racial impact of statutes and governmental acts adopted and made without a racially discriminatory purpose—creating a new constitutional duty prohibiting any governmental reform or remedial governmental action which does not promote racial integration in the face of minority racial concentration.

As the dissenting opinion below lucidly points out:

> "A search in the opinion of this court's majority for a finding of racially discriminatory purpose will be unproductive. . . ." (A31)

* * * * *

". . . I believe that if this court intended to find as a fact that Uni-Gov was adopted with a racially discriminatory purpose, in the face of the failure of the District Court to find, and of the appellees to argue, that there was such a purpose, it would do so directly and state the evidentiary basis for that finding. As stated above, I believe there is no such basis in the record." (A31)

The majority's predicate for measuring the constitutional validity of Uni-Gov, the Reorganization Act, and annexation statutes, is not "purpose" but "impact," as evidenced by the following excerpts from its opinion:

". . . The record fails to show any compelling state interest that would have justified the failure to include IPS in the Uni-Gov legislation. The desirability for a unitary civil government should not have precluded the General Assembly from considering the needs of the school system in its decision to enact Uni-Gov. As we noted earlier, the most substantial reasons advanced against the consolidation of the schools in Marion County when it was under consideration in 1959 were that a consolidated school district would be large, with consequent loss of citizen participation, and that it would increase taxes. These considerations, although apparently not racially motivated, cannot justify legislation that has an obvious racial segregative impact. Administrative convenience cannot be a justification for violating the Equal Protection Clause. . . ." (A19)

* * * * *

"Indianapolis presents an entirely different situation [from Detroit]. The Indianapolis [sic] legislature acted directly in passing Uni-Gov, thereby creating the existing situation which confines black students within IPS. Moreover, the suburban governmental units made it politically expedient that Uni-Gov not include the schools.

"In this case we are dealing with a situation in which but for certain events chargeable to the state, Marion County would be either a consolidated school district under the 1959 School Reorganization Act or IPS would

> have been expanded with the civil city of Indianapolis under Uni-Gov. . . ." (A20)

In substance, the Court of Appeals has based an interdistrict school violation on legislative enactments adopted for rational purposes and the actions of officials with jurisdiction over public housing taken without discriminatory racial intent solely because they did not affirmatively expand a central school district with a heavier black population into adjacent districts and did not affirmatively place public housing units which might ultimately locate minority families in suburban areas. By their proscription of acts "confining" blacks to the inner city both the District Court and the Court of Appeals proscribe any statute or act unaccompanied by an affirmative change in the demography of a central city school district by increasing its size and the affirmative location of black families in suburban areas.

The Court of Appeals supporting rationale (A22) is taken from the following language in *Evans* v. *Buchanan*, 393 F. Supp. 428 (D. Del.), *affirmed* 46 L. Ed 2d 293 (U. S. 1976):

> ". . . In sum, where a statute, either explicitly or effectively, makes the goals of a racial minority more difficult to achieve than other related governmental interests, the statute embodies a suspect racial classification and requires a particularly strong justification." (393 F. Supp. at 441)

The Seventh Circuit Court of Appeals also used similar reasoning in *Metropolitan Housing Corp.* v. *Village of Arlington Heights*, 517 F. 2d 409, 413-415 (1975), *cert. granted* 46 L. Ed 2d 404 (1975), striking down a suburban village's use of the standard zoning concept requiring "buffer zones" between land uses, because of the widespread racial discrimination in housing in the entire Chicago area.

One need not disagree with the holding of *Evans* v. *Buchanan*. The case involved the operation of a school reorganization statute held unconstitutional because it mandated a

reorganization plan keeping Wilmington as a separate school district. This occurred in a context where "*de jure* segregation . . . was a cooperative venture involving both city and suburbs . . . Wilmington and suburban districts were not meaningfully 'separate and autonomous.'" (393 F. Supp. at 437) *Cf., Wright* v. *Council of City of Emporia*, 407 U. S. 451 (1972).

But the principle set forth in *Evans* v. *Buchanan* and *Arlington Heights* is a vast extension of the concept of the Fourteenth Amendment equal protection duty owed minorities, creating a suspect classification based solely on racial impact without discriminatory intent, and is in direct conflict with this Court's decision in *Washington* v. *Davis*, 48 L. Ed 2d 597 (1976)—a decision which the majority in the Court of Appeals opinion completely disregards.[10]

The principles governing a school case asserting an inter-district violation of the Fourteenth Amendment rights of minority children are clear. The predicate for a constitutional violation is a racially discriminatory purpose—"a purpose or intent to discriminate." *Swann* v. *Charlotte Mecklenburg Bd. of Ed.*, 402 U. S. 1, 32 (1970); *Keyes* v. *School District No. 1*, 413 U. S. 189, 208 (1973); *Milliken* v. *Bradley*, 418 U. S. 717, 745 (1974); *Washington* v. *Davis, supra* (see excerpts quoted in the dissenting opinion at A27). Further, no particular degree of racial balance is constitutionally necessary either in a single school district or in a metropolitan area between school districts; and majority black schools and school districts are consistent with the constitutional rights of black students there enrolled. *Swann, supra*, 402 U. S. at 22; *Milliken, supra*, 418 U. S. at 746-747

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10. *Washington* v. *Davis* specifically disapproved the rationale of the decisions on which both *Arlington Heights, supra*, and *Evans* v. *Buchanan, supra*, are based (48 L. Ed. 2d at 610, n. 12). In support of *Arlington Heights: Kennedy Park Homes Assn.* v. *City of Lackawanna*, 436 F. 2d 108, 112 (1970), *cert. denied* 401 U. S. 1010 (1971). In support of *Evans* v. *Buchanan: Kennedy, supra; Norwalk CORE* v. *Norwalk Development Agency*, 395 F. 2d 920 (2nd Cir. 1968); *Hawkins* v. *Town of Shaw*, 437 F. 2d 1286 (5th Cir. 1971), affirmed on reh. *en banc* 461 F. 2d 1171 (1972).

and n. 22; *Spencer* v. *Kugler*, 326 F. Supp. 1235 (1971), *affirmed* 404 U. S. 1027 (1972). An interdistrict remedy involving more than one school district requires an interdistrict constitutional violation, a rule which is not one of balancing equities but is a basic limitation on the exercise of Federal equitable jurisdiction. *Milliken, supra*, 418 U. S. at 745; *Hills* v. *Gautreaux*, 47 L. Ed 2d 792, 801-803 (U. S. 1976). Disparate treatment of white and Negro students within a single school system, and not elsewhere, limits the remedy to that system and a contrary doctrine "can be supported only by drastic expansion of the constitutional right itself, an expansion without support in either constitutional principle or precedent." *Milliken, supra*, 418 U. S. at 747.

The creation of a suspect classification in the presence of racial imbalance would render these principles meaningless in the context of metropolitan United States. In substance, the Court of Appeals opinion has reverted to the position taken by the Sixth Circuit in *Bradley* v. *Milliken, supra*, typified by its comment that the United States' position against mandatory cross-district busing in this case "condemns the only relief which can make its demand [for the elimination of segregation] a reality." (A25)

This Court specifically disapproved this doctrine in *Washington* v. *Davis*:

> ". . . [V]arious Courts of Appeals have held in several contexts, including public employment, that the substantially disproportionate racial impact of a statute or official practice standing alone and without regard to discriminatory purpose, suffices to prove racial discrimination violating the Equal Protection Clause absent some justification going substantially beyond what would be necessary to validate most other legislative classifications. The cases impressively demonstrate that there is another side to the issue; but, with all due respect, to the extent that those cases rested on or expressed the view that proof of discriminatory racial purpose is unnecessary in making

out an equal protection violation, we are in disagreement." (48 L. Ed. 2d 610-611; footnote omitted)

* * * * *

"A rule that a statute designed to serve neutral ends is nevertheless invalid, absent compelling justification, if in practice it benefits or burdens one race more than another would be far reaching and would raise serious questions about, and perhaps invalidate, a whole range of tax, welfare, public service, regulatory, and licensing statutes that may be more burdensome to the poor and to the average black than to the more affluent white.

"Given that rule, such consequences would perhaps be likely to follow. However, in our view, extension of the rule beyond those areas where it is already applicable by reason of statute, such as in the field of public employment, should await legislative prescription." (48 L. Ed 2d at 612; footnote omitted)

The racial impact rule, espoused by the Seventh Circuit, would drastically limit the states' ability to accomplish civil reform. The drafting and adoption of Uni-Gov itself was a major undertaking consisting of 91 statutory pages with references incorporating more than 200 other laws, substantially revising lines of authority within the civil governments of Marion County, and, as a matter of common knowledge, created substantial public controversy and debate. Marion County had already been through a major school reorganization process in 1961 and 1962 under the Reorganization Act, a process which also as a matter of common knowledge caused more controversy in Marion County and throughout the State than virtually any other governmental reform. Gearing schools into Uni-Gov's administrative structure would have been inconsistent with Indiana's historic separation of school and civil governments, and would have required an entirely separate statute determining the fate of 11 boards comprised of 57 members, whether in such a large system there should be sub-boards, the powers of the boards and sub-boards, the number of board

members and the manner of their appointment or election. Reasonably, teachers would have wanted a provision protecting rights under differing collective bargaining contracts; and patrons, an assurance of the fair handling of the differing grade and curriculum structures in the different districts, producing different grade housing patterns, *e.g.*, middle school, junior high school. Arguably, if racial balance were to be effected, it could be better accomplished by fracturing, rather than by expanding, IPS. The improbability of simultaneously adopting two such reforms is manifest.

The Court of Appeals expansive doctrine of constitutional duty, creating a suspect classification in the presence of racial imbalance, would be particularly applicable throughout the metropolitan areas of the Seventh Circuit with far-ranging effects both in and beyond the Indianapolis area. Effective civil government mandates the consolidation of many civil governmental functions on a metropolitan scale in today's society. Cf. *Higgins* v. *Bd. of Ed. of the City of Grand Rapids*, 508 F. 2d 779, 796 (6th Cir. 1974). Which of these metropolitan consolidations would then trigger a consolidation of school districts: A metropolitan thoroughfare or transportation authority? A metropolitan park system? A metropolitan police force? A metropolitan land use and zoning authority? Or some combination of these or other functions?

A requirement that race be the primary determinant of any civil governmental reform would severely limit, if not end, the process of necessary change, and the Seventh Circuit's holding would render meaningless the doctrine of *Jefferson* v. *Hackney*, 406 U. S. 535, 546-547 (1972); *Dandridge* v. *Williams*, 397 U. S. 471, 485-486 (1970); and *Katzenbach* v. *Morgan*, 384 U. S. 641, 657 (1966), which, in the absence of a racially discriminatory intent, permits the tackling of reforms one at a time. The question raised is substantial.

2. The opinion below, by predicating an interdistrict school violation on the failure of suburban civil officials to execute a cooperation agreement under the United States Housing Act of 1937, and by affirming a judicial decree restructuring the operation of eight independently governed school districts not implicated in the purported violation, conflicts with the decisions of this Court in James v. Valitierra and Hills v. Gautreaux with wide-ranging national consequences.

It is undisputed that HACI could not obtain Federal funding for public housing projects under 42 U. S. C. § 1415(7)(b)(i) and HUD guidelines unless it entered into a cooperation agreement with the municipality or other civil government entity with jurisdiction over the territory in which it desired to locate public housing projects, that no such agreement was signed by any civil governmental entity except the Civil City of Indianapolis, and that this failure resulted in locating, prior to 1970, public housing projects for 900 to 1000 family units solely in IPS. There is no finding that the failure to execute such agreements was racially motivated. In *James* v. *Valtierra*, 402 U. S. 137, 141, 143, n. 4 (1971), however, this Court established that the refusal of a civil government under these circumstances was not an equal protection Fourteenth Amendment violation with respect to the location of public housing within a jurisdiction. Yet such location of public housing is the essence of the purported constitutional violation against the rights of minority children here involved.

Even more unsettling, the Court of Appeals held that the location of this number of units, not all of which in any event would have been located outside IPS, constituted an interdistrict constitutional violation and approved a judicial decree restructuring the operation of 8 out of the 11 Marion County school districts, none of which were involved in any way with the location, construction, or agreements with respect to public housing. Presumably, it would have approved a consolidation

of these districts had this been ordered by the District Court. In any case, the transfer into a district of a number of students equal to 15% of its then enrollment, will have vast effect on its operations, including staff and facilities, and does not comply with the principles of *Milliken* v. *Bradley, supra,* 418 U. S. at 746, n. 21, citing *Kramer* v. *Union Free School Dist. No. 11,* 395 U. S. 621, 626 (1969), or with the further delineation of these principles in *Hills* v. *Gautreaux, supra,* 47 L. Ed 2d at 801-803 (U. S. 1976).

But if such a restructuring can be ordered with respect to IPS and the surrounding separate and independent school corporations, it can be equally accomplished in any large city and its surrounding areas where the public housing has heretofore been limited to the central city school district; Chicago, under the facts set out in *Hills* v. *Gautreaux, supra,* Cleveland, under the facts set out in *Mahaley* v. *Cuyahoga Metropolitan Housing Authority,* 500 F. 2d 1087 (6th Cir. 1974), *cert. denied* 419 U. S. 1108 (1975); Brooklyn, under the District Court's opinion in *Hart* v. *Community School Bd. of Brooklyn, New York School Dist. No. 21,* 383 F. Supp. 699, 723-725, 747 (E. D. N. Y. 1974), affirmed but disapproved in part. 512 F. 2d 37, 56 (2nd Cir. 1975) are prime examples. This holding raises substantial constitutional questions.

3. The Court below failed to follow the decisions of this Court by supplying findings of the facts necessary to establish a constitutional violation—that but for events chargeable to the State, IPS would have expanded to the Marion County line—findings which the District Court refused to make after a hearing in which they were in issue.

In *Milliken* v. *Bradley, supra,* this Court set out with clarity the necessary causal predicate to a constitutional remedy:

> ". . . In such circumstances an interdistrict remedy would be appropriate to eliminate the interdistrict segregation

> directly caused by the constitutional violation. Conversely, without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy." (418 U. S. at 745)

The Court of Appeals finds its predicate in the Reorganization Act and Uni-Gov, in the following facts:

> "In this case we are dealing with a situation in which but for certain events chargeable to the state, Marion County would be either a consolidated school district under the 1959 School Reorganization Act or IPS would have been expanded with the civil city of Indianapolis under Uni-Gov." (A20)

But the factual basis for this finding was not made by the District Court but was supplied by the Court of Appeals on review. It is also clearly erroneous.

With respect to reorganization: Widespread support and a community consensus were absolute essentials to the implementation of any reorganized plan. As previously noted, where a plan established new district lines or a new school board setup (many school corporations theretofore having been operated by single township trustees), implementation required majority voter approval in an election or equivalent approval by petition in each proposed reorganized district (A103-A104). This procedure followed the purposes of the Reorganization Act set out in Section 1 thereof as follows (A97):

> ". . . [L]ocal electors have an interest in the boundaries of the school corporation in which they reside and will exercise their privileges, as herein provided, to the end of establishing an efficient and economical reorganization plan best suited to local conditions; . . ."

As the Court of Appeals itself found, a consolidated county plan had no widespread support and there was no evidence that in 1960 or at any time since, the voters in either IPS or the very many large school districts surrounding it would have voted for inclusion in a huge school district. The purported causal connection is non-existent.

Not only is the finding erroneous, but the Court of Appeals has disregarded the treatment of reorganization by the District Court. Appellees Buckley, in answer to interrogatories, conceded that their complaint made no attack on the validity of the proceedings by which the Marion County school corporations were created. Further, the District Court in ruling on a requested certification for a three-judge court held in a memorandum of January 3, 1973, that the Buckley complaint made no attack "explicit or implicit" on "the constitutionality of school organization and reorganization, student transfer and school fund allocation statutes which apply to the entire state of Indiana." In 1973, the District Court found that school reorganization hampered IPS in further reorganization without complying with the cumbersome procedures of the 1959 Act, and made it "impossible to comply with the law requiring meaningful desegregation." (368 F. Supp. at 1204), and in 1975 that annexation and consolidation plans had broken down on the local level because of suburban opposition (A40), but never found and never could have found that but for the failure of State officials to adopt a final plan for a county-wide school system under the Reorganization Act, Marion County would have had a county-wide school system.

With respect to Uni-Gov: The issues of cause and effect of Uni-Gov and the "companion" 1969 Acts were sharply raised in the March 17, 1975, hearing by a position paper filed March 10, 1975, in which the United States took the position that the 1969 Acts by ending the traditional relationship between school and Civil City expansion had impaired the ability of IPS to grow. The issue was fully defended in the District Court on the basis that Civil City growth had been haphazard and occurred primarily when developers for one reason or another needed city services, that annexation since the early 1960's had been substantially stopped by individual taxpayer remonstrances, that previous vigorous efforts of city administrations had been bogged down by court suits brought by landowner remonstrants

(*See* A14-A15 and A30, n. 5), and that eliminating any tie between civil and school boundaries was inconsequential in establishing IPS boundaries.[11]

With respect to Beech Grove and Speedway school corporations, the non-existent relationship between purported cause (Uni-Gov) and effect (loss of the right to follow civil annexation) is even more precise. The City of Indianapolis had no right to annex the territory of any other city or town either under Indiana Acts 1969, Chapter 239, or its predecessor, such action requiring a union of towns and an affirmative approving vote in a special election in each.[12] The same statutory requirement applied to all the other towns and cities existing in Marion County before Uni-Gov, including Lawrence and Southport "excluded cities" under Uni-Gov, but located, respectively, in only a part of The Metropolitan School Districts of Lawrence and Perry Townships.

After hearing, the issue was fully briefed, and the District Court's August 1, 1975, memorandum is devoid of any finding that except for Uni-Gov or the 1969 "companion legislation" IPS would have expanded by virtue of the theretofore existing annexation powers of the City of Indianapolis. A failure to find a fact essential to the case of a party with a burden of proof, is a finding against that party. The Court of Appeals was not in the position of an appellate court upholding a case on an issue not considered below but inherent in the District Court record. It has supplied findings of fact on an issue necessary to support its decision which the trial court failed to make after hearing the evidence and arguments on the issue, in contravention of previous rulings of this Court in *Time, Inc.* v. *Firestone*, 47

11. The Court of Appeals found that prior city administrations had not pursued annexations strongly (A18, n. 9) but this appears in the record only in Amicus' Answer Brief before the Court of Appeals, Amicus not participating in the trial below.

12. *Compare*, Acts 1905, Ch. 129, § 241 (A88) and § 244 as amended by Acts 1955, Ch. 269, § 4 (A95), with Acts 1969, Ch. 239, §§ 301 and 409 (IC 18-5-10-8 and 27) (A80 and A87).

L. Ed. 2d 154, 168 (U. S. 1976), and *Kelley* v. *Everglades Drainage Dist.*, 319 U. S. 415, 421-422 (1943), and of its own decisions. See, *Schioler* v. *Secretary of State of the United States*, 175 F. 2d 402, 403 (7th Cir. 1949).

Further, the evidence furnishes no justification for what is in effect a reversal of the District Court's decision in this regard. The Court of Appeals recognized that the Indianapolis Civil City's growth through annexation was effectively frustrated by remonstrance litigation (A30), and the evidence showed that this was almost entirely due to landowner litigation. Had Uni-Gov and its 1969 "companion legislation" never been adopted, the boundaries of the Civil City of Indianapolis and IPS would not now be substantially different than they were in 1969. The District Court was not in error for failing to find that there would have been such a difference; and in making its finding, the Court of Appeals has exceeded its reviewing authority.

CONCLUSION.

For the reasons stated, probable jurisdiction should be noted, or in the alternative, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit, entered July 16, 1976.

Respectfully submitted,

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APPENDIX.

OPINIONS BELOW.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

Nos. 75-1730 through 75-1737, 75-1765, 75-1936, 75-1964, 75-1965, and 75-2007

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

DONNY BRURELL BUCKLEY, ALYCIA MARQUESE BUCKLEY, by their parent and next friend RUBY L. BUCKLEY, on behalf of themselves and all Negro school age children residing in the area served by the original defendants herein,
Intervening Plaintiffs-Appellees,

vs.

BOARD OF SCHOOL COMMISSIONERS OF CITY OF INDIANAPOLIS, INDIANA, et al.,
Defendants-Appellants.

Appeals from the United States District Court for the Southern District of Indiana, Indianapolis Division.
No. IP-68-C-225
S. HUGH DILLIN, *Judge.*

Argued December 3, 1975—Decided July 16, 1976

Before FAIRCHILD, *Chief Judge,* SWYGERT and TONE, *Circuit Judges.*

SWYGERT, *Circuit Judge*. This is the third review of successive desegregation orders in a suit brought in 1968 by the United States against the Board of School Commissioners of the City of Indianapolis. The issue before us, as in *Milliken* v. *Bradley*, 418 U. S. 717 (1974), concerns the appropriate exercise of federal equity jurisdiction. The district court found two violations of the Equal Protection Clause upon which it based the interdistrict remedies that are at issue on this appeal. The first was the failure of the state to extend the boundaries of the Indianapolis Public School District (IPS) when the municipal government of Indianapolis and other governmental units in Marion County, Indiana, were replaced by a consolidated county-wide government called Uni-Gov. The second violation was the confinement of all public housing projects (in which 98 percent of the residents are black) to areas within the boundaries of the City of Indianapolis.

On the basis of these violations the district court determined that a limited interdistrict remedy would be appropriate. The court ordered a transfer of black IPS students in grades 1-9 to suburban school districts (except two) within Marion County in such number as to cause the total enrollment of pupils in the suburban schools to be 15 percent black after the transfer. The district court also enjoined the Housing Authority of the City of Indianapolis from constructing any future public housing projects inside the boundaries of IPS and from renovating a housing project known as Lockefield Gardens for other than elderly persons.

On the basis of the entire record and the findings of the district court, we affirm.

I.

The History of the Case

The history of this litigation was described in our most recent opinion, *United States* v. *Board of School Commissioners of*

City of Indianapolis, Indiana, 503 F. 2d 68, 71-75 (7th Cir. 1974), *cert. denied*, 421 U. S. 929; nonetheless, a brief summary is appropriate.

There have been four phases in this suit. In *Indianapolis I* the sole issue was racial segregation within the schools in the Indianapolis Public School District. Judge Dillin, after noting Indiana's official policy of school segregation until 1949, reviewed the conduct of IPS since that year and found the school district guilty of *de jure* segregation. *United States* v. *Board of School Commissioners of City of Indianapolis, Indiana*, 332 F. Supp. 655 (S. D. Ind. 1971).

The court then ordered the United States to add as defendants other school districts in the metropolitan area in order to provide the proper setting for consideration of the appropriateness of a metropolitan remedy. The Government complied with the order. The Buckley plaintiffs, representing a class of black school children, were granted permission to intervene. They joined as defendants several state officials and additional school districts.

On appeal this court affirmed, finding that there was a clear pattern of purposeful discrimination in the gerrymandering of school attendance zones, in the segregation of faculty, in the use of optional attendance zones among the schools, and in school construction and placement—a "[P]attern of decision making which . . . reflected a successful plan for *de jure* segregation." *United States* v. *Board of School Commissioners of City of Indianapolis, Indiana*, 474 F. 2d 81, 84-88 (7th Cir. 1973), *cert. denied*, 413 U. S. 920.

After remand from this court, the district court in *Indianapolis II* took up the problem of fashioning a remedy. One of the issues at trial was the constitutionality of the Uni-Gov Act. The court ordered a remedy without reaching this question. The court found that a meaningful permanent desegregation plan could not be accomplished within the boundaries of IPS, based upon evidence that when the percentage of blacks in a given school

approaches 25 to 30 percent white flight accelerates, resulting in resegregation. *United States* v. *Board of School Commissioners of City of Indianapolis, Indiana,* 368 F. Supp. 1191 (S. D. Ind. 1973). The court further found that the State of Indiana, its officials, and agencies by various acts and omissions promoted segregation and inhibited desegregation within IPS, so that the state which was ultimately charged under the Indiana law with the operation of its public schools had a continuing affirmative duty to desegregate the Indianapolis school system.

The court then ordered a broad interdistrict remedy which encompassed the entire metropolitan area including school districts outside of Marion County. The court held it was the duty of the state, through its General Assembly, to devise its own plan of desegregation, with the understanding that if it failed to do so within a reasonable time the court would have the authority and duty to formulate its own plan. As interim relief, the court ordered IPS to effect pupil reassignment for the 1973-1974 school year sufficient to bring the number of black pupils in each of its elementary schools to approximately 15 percent.

In response to the court's order for the interim relief, IPS submitted a desegregation plan. The court rejected it as inadequate and appointed a two-member commission to develop a plan. This plan was approved by the court and has been implemented. The district court also ordered IPS to transfer to certain defendant school districts a number of black pupils equal to 5 percent of the 1972-1973 enrollment of each transferee school (with certain exceptions). (This portion of the order was stayed incident to subsequent proceedings.) *United States* v. *Board of School Commissioners of City of Indianapolis, Indiana,* 368 F. Supp. 1223 (S. D. Ind. 1973).

In *Indianapolis III* the court issued a supplementary opinion in which Judge Dillin proffered recommendations to the State of Indiana for implementing a desegregation plan. In response, the General Assembly adopted a bill that provides for the adjust-

ment of tuition among the transferor and the transferee districts and for the reimbursement of transportation costs by the state whenever a federal or state court makes certain findings.[1]

On appeal from *Indianapolis II and Indianapolis III* this court, besides affirming the commission's interim IPS plan, affirmed the district court's holding that the State of Indiana, as the ultimate body charged with responsibility of operating its public schools, "[H]as an affirmative duty to assist the IPS Board in desegregating IPS within its boundaries . . . ." *United States* v. *Board of School Commissioners*, 503 F. 2d 68, 80 (7th Cir. 1974), *cert. denied*, 421 U. S. 929. This court, however, in accordance with *Milliken* v. *Bradley*, 418 U. S. 717 (1974), reversed the district court's order pertaining to the interdistrict remedy as to those school districts outside of Uni-Gov (Marion County). That portion of the order pertaining to the interdistrict remedy within Uni-Gov was vacated and remanded for further proceedings. We said:

> The district court should determine whether the establishment of the Uni-Gov boundaries without a like reestablishment of IPS boundaries warrants an interdistrict remedy within Uni-Gov in accordance with *Milliken*. 503 F.2d at 86.

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1. The Indiana Statute, Acts 1974, P. L. 94, § 1; I. C. 1971, 20-8.1-6.5-1, Burns Ind. Stat. Ann. § 28-5031 (1971), provides in pertinent part:

> This chapter applies solely in a situation where a court of the United States or of the State of Indiana in a suit to which the transferor or transferee corporation or corporations are parties has found the following: (a) a transferor corporation has violated the equal protection clause of the Fourteenth Amendment to the Constitution of the United States by practicing de jure racial segregation of the students within its borders; (b) a unitary school system within the meaning of such Amendment cannot be implemented within the boundaries of the transferor corporation, and (c) the Fourteenth Amendment compels the Court to order a transferor corporation to transfer its students for education to one or more transferee corporations to effect a plan of desegregation in the transferor corporation which is acceptable within the meaning of such Amendment.

On remand, in *Indianapolis IV* (unreported opinion), the district court held another evidentiary hearing on Uni-Gov and housing practices within Marion County. In regard to Uni-Gov Judge Dillin found:

> The evidence clearly shows that at the time of the passage of the Uni-Gov Act in 1969, various annexation plans and school consolidation plans had bogged down on the local level because of the aforementioned opposition of the suburban school corporations within Marion County, and their patrons . . . . When the General Assembly [which under state and federal law had a duty to alleviate segregation in IPS] expressly eliminated the schools from consideration under Uni-Gov, it signaled its lack of concern with the whole problem and thus inhibited desegregation [*sic*] IPS.

Referring to the suburban Marion County units of government, he stated:

> They have resisted school consolidation, they resisted civil annexation so long as civil annexation carried school annexation with it, they ceased resisting civil annexation only when the Uni-Gov act made it clear that the schools would not be involved. Suburban Marion County has resisted the erection of public housing projects outside IPS territory, suburban Marion County officials have refused to cooperate with HUD on the location of such projects, and the customs and usages of both the officials and inhabitants of such areas has [*sic*] been to discourage blacks from seeking to purchase or rent homes therein, all as shown in detail in previous opinions of this Court.

With respect to the public housing authorities the district judge said:

> The evidence is undisputed that each and every public housing project constructed and operated by the added defendant HACI is located within IPS territory, in some instances just across the street from territory served by one of the added defendant school corporations. Each of such

> locations was approved—in some instances selected in the first place—by the added defendant Commission. The latter institution has had county-wide zoning jurisdiction at all times during the construction of 10 out of the 11 public housing projects for families, and HACI has at all times had the authority to erect public housing within the City of Indianapolis, and within five miles of the corporate limits of such city. The residents of said public housing projects are approximately 98% black (except in projects for the elderly), and their children all attend school in IPS. The location of these housing projects by instrumentalities of the State of Indiana has obviously tended to cause and to perpetuate the segregation of black pupils in IPS territory.

Based on these findings and those set forth in his former opinions, Judge Dillin ruled that an interdistrict remedy was necessary to effect desegregation within IPS. He again found that if desegregation were limited to IPS, schools within IPS would become 42 percent black, and that this percentage exceeded the "tipping point" at which resegregation would occur. He commented:

> The Court of Appeals has called the attention of this Court to the rule of law that "white flight" is not an acceptable reason for failing to dismantle a dual school system. 503 F.2d 80, citing *United States* v. *Scotland Neck City Board of Education,* 407 U.S. 484, 491, 92 S.Ct. 2214, 2218, 33 L.Ed.2d 75 (1970). However, it does not follow that this Court must ignore the probability of white flight in attempting to formulate guidelines for IPS to follow in accomplishing the final desegregation of its schools. In other words, as this Court sees it, white flight may not be used as an excuse for inaction; it may, however, supply the reason for a particular kind of action.

Judge Dillin therefore ordered the transfer of 6,533 students from IPS to other school districts in Marion County. An additional 3,000 students were to be transferred in the second year of the plan, raising the proportion of black students in the

suburban schools to 15 percent.[2] No transfers were ordered to Washington and Pike Townships, which already had black populations of 12 and 4 percent. The district court also enjoined the Housing Authority from building any more family housing projects in IPS territory and from renovating an all black project called Lockefield Gardens. Finally, the Buckleys were awarded attorneys' fees under 20 U. S. C. § 1617.

All the defendants have appealed. The defendants other than the Housing Authority challenge the interdistrict transfers ordered by the district court. The Housing Authority challenges the injunction against it. On the other side, the Buckleys, together with an *amicus curiae,* the Coalition for Integrated Education, argue for affirmance of the district court order. The United States argues that the finding of interdistrict violations should be sustained but seeks modification of the portion of the order calling for mandatory interdistrict transfers of students. It argues for affirmance of the injunction against the Housing Authority.

II

Facts Pertinent to This Appeal

A. Residential and School Demography of Marion County

In 1969 when Uni-Gov was created, 95 percent of the blacks in Marion County lived in Indianapolis. Only about 50 percent of the whites in the county lived in the city. The black population continues to grow within the core city as reflected by the ratios in the schools. The percentage of black students in IPS increased from 36 percent in 1968 to 42 percent in 1975. The 1974-1975 black/white ratio in IPS was 57.22 percent white and 42.16 percent black. On the other hand, the overall ratio in Marion County was 74.87 percent white and 24.40 percent

2. IPS will be obligated to pay the suburban school districts the cost of educating the transferred pupils. See *supra,* n. 1.

black.[3] For the years 1974-1975 the racial composition of the suburban school districts within Marion County was as follows:

Township	Percentage of White	Percentage of Black
Decatur	99.83	.9
Franklin	99.35	.54
Lawrence	95.50	2.9
Perry	98.64	.23
Warren	98.61	.73
Wayne	97.87	1.19
Beech Grove	99.64	.04
Speedway	99.10	.72

B. Uni-Gov

Until 1969 the boundaries of IPS corresponded roughly to the boundaries of the City of Indianapolis, and the other Marion

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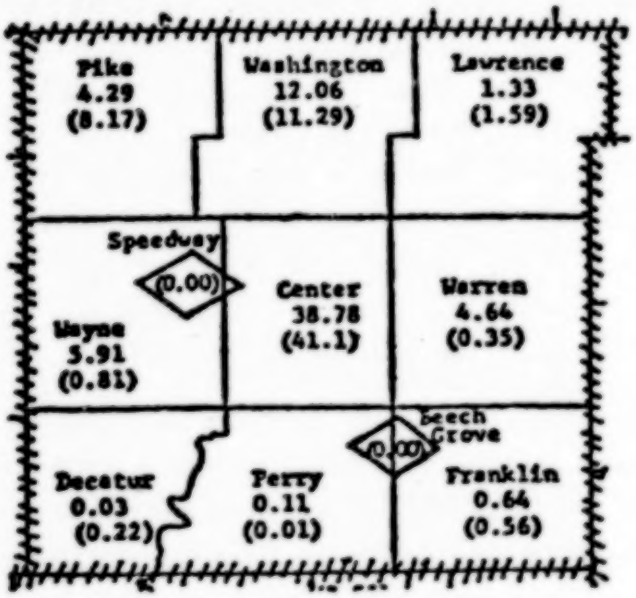
3. The black population in Marion County is reflected by the following map.

1973

Percentage of Black Residents in Marion County
(Percentage of Black Students in Marion County Schools)



County school districts were truly suburban. In 1969, however, the so-called Uni-Gov Act, which is officially titled the "First Class Consolidated Cities and Counties Act," Acts 1969, ch. 173, § 101; I. C. 1971, 18-4-1-1 *et seq.*, Burns Ind. Stat. Ann. §§ 48-9101 *et seq.* (1971), transformed Marion County into a consolidated metropolitan government. School districts were specifically excluded from Uni-Gov.

Uni-Gov is governed by a mayor and council. Its purpose was to efficiently reorganize civil government within Marion County. Previously, there had been a splintering of governmental responsibility into loosely controlled agencies with overlapping jurisdictions. Uni-Gov has succeeded to most of the functions of county government and of numerous special service districts. It has also succeeded to the functions of the City of Indianapolis and provides municipal services such as police and fire protection within the approximate area of the old city. The Act contains provisions for expanding the areas in which Uni-Gov delivers these municipal services. See, *e.g.*, I. C. 1971, 18-4-12-36 (fire district); I. C. 1971, 18-4-12-8 (police district).

Uni-Gov has not, however, replaced all existing governmental units in Marion County. For example, the airport authority, the county courts, the building authority, and the hospital corporation were excluded from Uni-Gov. The so-called "excluded cites" of Speedway, Perry, and Lawrence retain their own local governments which provide municipal services in those areas. Nonetheless, Uni-Gov has significant powers even in the excluded cities. It is in charge of air pollution regulation, building code enforcement, and municipal planning and thoroughfare control. Moreover, the citizens of the excluded cities vote in Uni-Gov elections.

C. History of Public Housing

Between 1966 and 1970 the Housing Authority built and opened for occupancy ten housing projects for low-income

families. These and Lockefield Gardens, which was built during the depression, are the only public housing projects for family occupancy in Marion County, although other forms of subsidized housing are available. All ten projects were built within the boundaries of IPS. These projects opened with 50 to 75 percent black occupancies and are now 98 percent black.

The Housing Authority was authorized under state law to construct projects within Indianapolis and within five miles of the city's boundaries. Federal funding could be obtained only if the Housing Authority entered into a cooperation agreement with the municipality or other civil governmental entity having jurisdiction over the territory in which it desired to build. The City of Indianapolis entered into a cooperation agreement with the Housing Authority, but no other governmental entity in Marion County did so, even though the Housing Authority approached the county commissioners about an agreement.

Since 1969, when Uni-Gov became effective, the Housing Authority has apparently had the authority to construct projects outside the old city limits, except in the Towns of Speedway, Lawrence, and Beech Grove, without the need for cooperation agreements. No housing projects have been commenced within or outside IPS since that time nor are any planned. The record does not show why. There are presently pending applications for approximately 3,000 families.

The Housing Authority argued that suitable sites did not exist outside the City of Indianapolis because services such as public transportation would have been unavailable. There was evidence, however, that these services could have been arranged. The evidence showed that public transportation routes could have been extended to areas of demonstrated need, that food stamp distribution offices could have been established at the projects, that sewage services could have been obtained by contract with the city, and that police and fire protection could have been obtained from the city.

Six of the housing projects are on the IPS boundary lines or within a few blocks thereof. For example, Clearstream Gardens was located on the IPS side of a street which divided IPS and Warren Metropolitan School District. A witness for the Housing Authority under questioning by the district court, was unable to state why, "from the standpoint of these criteria you mentioned," there was "any difference at all between the location on the east side or the west side of Emerson Avenue." The other projects and their locations are set forth below.[4] These projects contain between 900 and 1,000 family units and house a substantial number of black school children.

D. History of School District Boundaries

Until 1969, under a variety of laws which are discussed below, the IPS boundaries were largely coterminous with the city boundaries. Under a 1931 act, the boundaries of IPS were made coterminous with those of the city. Acts 1931, ch. 94, §1; I. C. 1971, 20-3-11-1, Burns Ind. Stat. Ann. § 28-2601 (1971).[5] Until 1959, boundaries of school districts and municipalities were also coterminous elsewhere in Indiana, with some

4. Rowney Terrace is ten blocks north of Clearstream Gardens on the same boundary line between IPS and Warren Metropolitan School District (MSD).

Raymond Villa is approximately four blocks north of the boundary line between IPS and Beech Grove

Laurelwood is in a narrow peninsula of IPS that is surrounded on three sides by Perry MSD.

Concord Village is approximately one-half mile from the Speedway boundary.

Eagle Creek is on the boundary line between IPS and Wayne MSD.

5. Acts 1963, ch. 310, § 4; I. C. 1971, 20-3-11-33, Burns Ind. Stat. Ann. § 28-2633 (1971), provides that the 1931 act remains in effect except to the extent that its various provisions are inconsistent with the 1959 act discussed in the text. The provision of the 1931 act making IPS boundaries coterminous with those of Indianapolis is inconsistent with the 1959 act and consequently was not reenacted by the 1963 act. The 1963 act did not purport to affect the provisions of the 1961 act discussed in the text.

exceptions, and the IPS boundaries merely reflected the generally prevailing condition.

In 1959 the Indiana School Reorganization Act, Acts 1959, ch. 202, § 1; I. C. 1971, 20-4-1-1 *et seq.*, Burns Ind. Stat. Ann. § 28-3501, n (1971), created a complex scheme for consolidating school districts. Consolidations under the Act reduced the number of school districts outside Marion County from 990 to 305. Some 70 percent of reorganized districts were not coterminous with other units of civil government. In some cases consolidated school districts crossed county lines.

Marion County, however, was an exception. School districts there were not consolidated. The Marion County Reorganization Committee, appointed pursuant to the Act, initially recommended that all school systems in the county be merged into one, but the unanimous opposition of the suburban school districts defeated the merger proposal. There is no evidence that this opposition was racially motivated.[6] The Committee's ill-fated consolidation proposal was intended to "develop equal educational opportunities for all children in Marion County," and to "eliminate the confusion of school transfers and dislocations involved in annexation proceedings."

The most substantial reasons against consolidation noted in the Committee's report were that a consolidated school district would be large, with consequent loss in citizen participation and interest in school affairs, and that merger would result in increased school taxes in IPS and two of the suburban districts. The Committee explained that the consolidation plan "had no widespread support—only organized opposition," and that it did not wish to "force a plan (however sound in its conception) upon an unwilling or reluctant public." So, although it believed the arguments in favor of its plan far outweighed the opposition

6. The district judge's comment is pertinent. "In fact, the evidence shows that, with a few exceptions, none of the added defendants have had the opportunity to commit such overt acts because the Negro population residing within the borders of such defendants ranges from slight to none, . . . " *United States* v. *Board of School Commissioners,* 368 F. Supp. at 1203.

arguments, the Committee, as the district court found, "[R]eversed itself and proposed a plan which, with minor exceptions . . . froze all existing school corporations in Marion County according to their then existing 1961 boundaries." *United States* v. *Board of School Commissioners,* 368 F. Supp. 1191, 1203 (S. D. Ind. 1973). The Committee thereby abandoned both its merger plan and a less radical plan which would have restructured school boundaries on what the Committee regarded as a more rational basis than existing boundaries. Accordingly, the plan adopted in 1962, after approval by the state, did not significantly change boundaries in Marion County, but left those boundaries coterminous with those of civil governmental bodies.

As a result of the 1959 Reorganization Act, school boundaries in most of the state were frozen and thereafter unaffected by municipal annexations. In 1961, however, special legislation was enacted to give the schools within Marion County the flexibility lost by the 1959 Reorganization Act. Acts 1961, ch. 186, § 1; I. C. 1971, 20-3-14-1 *et seq.*, Burns Ind. Stat. Ann. § 28-3610 (1971). Under the 1961 act extension of the boundaries of a civil city automatically extended the corresponding school district boundaries unless the school city and the losing school corporation mutually agreed that the school city territory would not expand with the civil city. The school district whose territory was to be taken could also oppose the civil annexation in a remonstrance suit. The annexation powers of the city, however, proved to be illusory, for they were effectively frustrated by remonstrance litigation.[7]

Another means of annexation under the 1961 act was by mutual agreement between school corporations. IPS (and other school districts with boundaries corresponding with those of a civil city) also had a unilateral power of annexation subject to the right of the school district whose territory was to be taken

7. This frustration of the city's annexation efforts was one of the reasons for Uni-Gov given by Mayor Lugar in his testimony before the district court.

to oppose by remonstrance. No significant action was taken by IPS under this provision.

In summary, until 1969, the combined action of the State of Indiana and its political subdivisions had the effect of leaving the boundaries of the City of Indianapolis and IPS substantially the same despite statewide school district consolidations made under the 1959 act. True, IPS could expand independently of the city, but the city's annexation prima facie carried IPS with it. Although it turned out that no annexations occurred, the policy of the state, as expressed in the 1961 legislation, was that IPS would expand along with the city.

In 1969, after this action was filed, two other acts were adopted. One act, Acts 1969, ch. 52, § 3; I. C. 1971, 20-3-14-9, Burns Ind. Stat. Ann. § 28-3618 (1971), adopted sixteen days before Uni-Gov was enacted, amended the 1961 act by abolishing the power of IPS to follow municipal annexations. Another act, Acts 1969, ch. 239, § 407; I. C. 1971, 18-5-10-25, Burns Ind. Stat. Ann. § 48-722 (1971), limited the remonstrances against municipal annexations to a few, simple, fairly objective grounds.

III.

The overall issue in this appeal is whether the limited interdistrict remedy ordered by the district court is supported by the record and is in accord with the legal principles enunciated in *Milliken* v. *Bradley*, 418 U. S. 717 (1974). Subsumed in the issue are two questions: (1) whether the establishment of Uni-Gov boundaries without a like reestablishment of IPS boundaries warrants an interdistrict remedy within Uni-Gov, and (2) whether the district court correctly enjoined the Housing Authority of the City of Indianapolis from locating any additional publicly funded housing projects within the boundaries of IPS and from renovating any existing facility for other than the elderly.[8]

8. The school district defendants argue that our mandate limited inquiry on remand to Uni-Gov itself. It is true that our remand

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In our opinion, *Milliken's* essential holding is contained in the following language written by Mr. Chief Justice Burger:

> The controlling principle consistently expounded in our holdings is that the scope of the remedy is determined by the nature and extent of the constitutional violation. *Swann,* 402 U. S., at 16. Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. *Specifically, it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of interdistrict segregation.* Thus an interdistrict remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race. In such circumstances an interdistrict remedy would be appropriate to eliminate the interdistrict segregation directly caused by

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"[F]or further proceedings consistent with" *Milliken* v. *Bradley* was qualified by the specific direction to "[De]termine whether the establishment of the Uni-Gov boundaries without a like reestablishment of IPS boundaries warrants an inter-district remedy within Uni-Gov in accordance with *Milliken.*" *United States* v. *Board of School Commissioners,* 503 F. 2d 68, 86 (7th Cir. 1974), *cert. denied,* 421 U. S. 929. This direction, however, was itself qualified by a footnote quoting from passages in the opinion of the Court in *Milliken* and in Mr. Justice Stewart's concurring opinion. Both passages mention the drawing of school district lines on the basis of race as a possible ground for interdistrict relief; the former also includes as a possible ground discriminatory acts of other school districts; and the latter mentions "[P]urposeful, racially discriminatory use of state housing or zoning laws" by state officials. *Id.* at n. 23. We interpret the mandate as sufficiently broad to permit consideration of official conduct which arguably bears a historical relationship to the failure to expand the IPS boundaries to match those of Uni-Gov, which includes the failure to change IPS boundaries during the 1959-1962 Indiana school reorganization program and the failure to locate any public housing outside the IPS boundaries. On the intervening plaintiffs' theory of the case, which the district court adopted, this course of conduct was a part of a pattern, of which Uni-Gov was also a part.

> the constitutional violation. Conversely, without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy. (emphasis added.) *Milliken* v. *Bradley*, 418 U. S. 717, 744-45.

That holding was further explicated in *Hills* v. *Gautreaux*, 44 U. S. L. W. 4480, 4484 (U. S. April 20, 1976), where Mr. Justice Stewart wrote:

> The Court's holding that there [*Milliken* v. *Bradley*] had to be an interdistrict violation or effect before a federal court could order the crossing of district boundary lines reflected the substantive impact of a consolidation remedy on separate and independent school districts. The District Court's desegregation order in *Milliken* was held to be an impermissible remedy not because it envisioned relief against a wrongdoer extending beyond the city in which the violation occurred but because it contemplated a judicial decree restructuring the operation of local governmental entities that were not implicated in any constitutional violation.

In *Milliken* the majority opinion also noted that, "[I]n its present posture the case does not present any question concerning possible state housing violations." *Milliken* v. *Bradley*, *supra* at 728, n. 7. Mr. Justice Stewart, in his concurring opinion, explicitly explained the relevance of housing discrimination as it relates to an interdistrict remedy in school desegregation cases. Mr. Justice Stewart wrote:

> Were it to be shown, for example, that state officials had contributed to the separation of the races by drawing or redrawing school district lines, . . . by transfer of school units between districts, . . . or by purposeful, racially discriminatory use of state housing or zoning laws, then a decree calling for transfer of pupils across district lines or for restructuring of district lines might well be appropriate. *Id.* at 755.

With these holdings in mind we turn to the issue of Uni-Gov as it relates to an interdistrict violation.

Although Uni-Gov was a neutral piece of legislation on its face with its main purpose to efficiently restructure civil govern-

ment within Marion County, it cannot be analyzed in isolation if its impact on school district boundaries is to be clearly perceived. Rather it must be considered in conjunction with the two other acts adopted in 1969. (See *supra* pp. 12-13.)

For some time Mayor Lugar had expressed his desire to embark on a more aggressive annexation program in order to bring a greater part of the urbanized area under the city's control. The concept of Uni-Gov was promoted as a more viable alternative to lengthy annexation litigation.[9] The suburban school corporations and their legislative representatives were obviously aware that if Uni-Gov did not pass and the civil city was forced to embark on a more aggressive annexation program as a last resort to reorganizing governmental services, IPS boundaries would automatically extend with the civil city boundaries under the 1961 Annexation Act.[10] In order to avoid this undesired result Chapter 52, 1969 Acts was enacted sixteen days before Uni-Gov was adopted. This Act repealed the provision in the 1961 Act which provided for automatic extension of school city boundaries with the extension of civil city boundaries. Chapter 239, 1969 Acts was also adopted, limiting remonstrances against municipal annexations to a few, simple, fairly objective grounds.

It must be kept in mind that at this time both the General Assembly and the suburban school districts knew that this action was pending in district court. These "fail safe" measures indicated a legislative intent (reflecting local sentiments) that by one means or another the boundaries of IPS would not expand with those of the civil city. We say this because a court is entitled to draw reasonable and logical inferences from

9. Prior city administrations had not strongly pursued civil annexations and those that had been adopted were being effectively thwarted by remonstrances in the courts.

10. Under the 1961 Annexation Act the only way to avoid automatic extension of the school city boundaries, other than by remonstrance, was by mutual agreement between the acquiring and losing school corporations that the school city boundaries would not extend with the civil city boundaries.

probable consequences of changes in the law and the evident purpose of such changes.

Because, in 1969, 95 percent of the blacks in Marion County lived in the inner city and segregation in its schools was under attack in federal court, it is clear to us that Uni-Gov and its companion 1969 legislation were "[A] substantial cause of inter-district segregation." *Milliken* v. *Bradley*, 418 U. S. 717, 745 (1974), and "[C]ontributed to the separation of the races by . . . redrawing school district lines. . . ." *Id.* at 755 (Stewart, J., concurring).

The General Assembly, under both federal law as expressed in *Brown* v. *Board of Education*, 349 U. S. 294 (1955), and in *Green* v. *County School Board*, 391 U. S. 430 (1968), and Indiana law as expressed in Acts 1949, ch. 186, §§ 1-6, 8, as repealed by Acts 1973, P. L. 218, § 1; I. C. 1971, 20-8.1-2-1 —20-8.1-2-7, Burns Ind. Stat. Ann. § 28-5304 (1971), had an obligation to alleviate the segregated condition in IPS. The record fails to show any compelling state interest that would have justified the failure to include IPS in the Uni-Gov legislation. The desirability for a unitary civil government should not have precluded the General Assembly from considering the needs of the school system in its decision to enact Uni-Gov. As we noted earlier, the most substantial reasons advanced against the consolidation of the schools in Marion County when it was under consideration in 1959 were that a consolidated school district would be large, with consequent loss of citizen participation, and that it would increase taxes. These considerations, although apparently not racially motivated, cannot justify legislation that has an obvious racial segregative impact. Administrative convenience cannot be a justification for violating the Equal Protection Clause. The district court correctly observed, "When the General Assembly expressly eliminated the schools from consideration under Uni-Gov, it signaled its lack of concern with the whole problem and thus inhibited desegregation with [*sic*] IPS."

In summary, we are convinced that the essential findings for an interdistrict remedy found lacking in *Milliken* are supplied by the record in the instant case. In *Milliken* the Supreme Court noted that the Detroit school boundaries were coterminous with the civil city boundaries and "[W]ere established over a century ago by neutral legislation . . . ." *Milliken* v. *Bradley*, 418 U. S. 717, 748 (1974). The Court also observed the district court did not find that the segregative acts within Detroit effected segregation within the other districts. *Id.* at 721. Furthermore, the suburban school districts had not participated in the proceedings, *id.* at 722, and finally, there had been no evidence of any racially discriminatory acts of the state which had been substantial causes of interdistrict segregation, *id.* at 745. The remedy chosen by the district court required a consolidation of fifty-four districts "into a vast new super school district," *id.* at 743.

Indianapolis presents an entirely different situation. The Indianapolis Legislature [*sic*] acted directly in passing Uni-Gov, thereby creating the existing situation which confines black students within IPS. Moreover, the suburban governmental units made it politically expedient that Uni-Gov not include the schools.

In this case we are dealing with a situation in which but for certain events chargeable to the state, Marion County would be either a consolidated school district under the 1959 School Reorganization Act or IPS would have been expanded with the civil city of Indianapolis under Uni-Gov. In this context there is nothing talismanic about the word "district", for school district lines are not sacrosanct. *Milliken, supra* at 744. The following hypotheticals are helpful in analyzing the problem.

> (a) City A has one school district, coterminous with City A. The Government brings a suit, alleging *de jure* segregation in the city schools, particularly in the northeast portion of the city. The defendant school board agrees that the northeast portion of the city must be desegregated, but argues that a district wide remedy is unnecessary,

that is, that only the schools in the northeastern portion of City A need be affected. On these facts, *Keyes* v. *School District No. 1*, 413 U. S. 189, 208 (1973), would control.

(b) City B has one school district that is coterminous with city boundaries. Perhaps fearing an impending desegregation suit, City B decides to contract its school district boundaries so that the school district encompasses the bulk of the central city while the outlying areas of the city organize their own school districts. On these facts, no federal court in a desegregation suit would hesitate in ordering the crossing of district lines to effect a remedy.

(c) City C decides to expand its boundaries and annexes the suburbs surrounding it into a unitary civil government. However, it retains its school district boundaries, previously coterminous with its former city boundaries. In every other respect it provides full city services in and exercises full city authority over the newly acquired territory. These facts are analogous to those of the case at bar. In the event of a meritorious desegregation suit in hypothetical City C, a district court could properly order an interdistrict remedy under *Milliken*.

There is no dispute that a school district may not contract its territory in order to avoid desegregation. *Cf. Wright* v. *Council of City of Emporia*, 407 U. S. 451 (1972). Conversely, a city should not be permitted to extend its boundaries in order to avoid desegregation.

Evans v. *Buchanan*, 393 F. Supp. 428 (D. Del. 1975), *aff'd*, ... U. S. ....., 44 U. S. L. W. 3299 (1975), is a case which is factually analogous to the instant case in many respects and in accord with *Milliken*. In *Evans* the district court had to consider the segregative effects of the Education Advancement Act of 1968, a Delaware school reorganization statute, which explicitly excluded the Wilmington district from a general reorganization of Delaware school districts. Although the district court concluded that the provisions excluding the Wilmington district from school reorganization were not purposefully, racially discriminatory, this did not end its inquiry.

The court noted, "Statutes that do not explicitly deal with race but have a pronounced racial effect, . . . can also establish suspect racial classifications." *Evans* v. *Buchanan, supra* at 441. It further stated that "[W]here a statute, either explicitly or effectively, makes the goals of a racial minority more difficult to achieve than other related governmental interests, the statute embodies a suspect racial classification and requires a particularly strong justification." *Id.* The court therefore held that the Education Advancement Act, although racially neutral on its face, "[H]ad a significant racial impact on the policies of the State Board of Education, . . ." *id.* at 442-443, and thereby constituted a suspect classification. In effect, the statute prevented a predominantly black school district from being reorganized with a predominantly white suburban school district while other districts in the state were able to consolidate. The court finally concluded that "Neither . . . interest in preserving a historic school district boundary, nor the interest in maintaining districts with enrollments below 12,000 . . .," *id.* at 445, was a compelling state interest and did not justify the exclusion of Wilmington in the Education Advancement Act. On this basis the district court ordered an interdistrict remedy. The Supreme Court summarily affirmed.

In light of the above we find that the limited interdistrict remedy ordered by the district court was proper.

IV.

We now turn to the housing issue. As we stated above 95 percent of the black residents of Marion County live in the inner city. Surrounding the inner city are suburbs populated largely by white residents. This phenomenon may have many causes, but we think the district judge was correct in finding as the primary reason discrimination in the availability of housing opportunities for blacks in the suburbs. We are in agreement with Judge Dillin's statement:

> Although it is undoubtedly true that many factors enter into demographic patterns, there can be little doubt that the principal factor which has caused members of the Negro race to be confined to living in certain limited areas (commonly called ghettos) in the urban centers in the north, including Indianapolis, has been racial discrimination in housing which has prevented them from living any place else. *United States* v. *Board of School Commissioners*, 68 F. Supp. 1191, 1204 (S. D. Ind. 1973).

Although the Housing Authority had jurisdiction outside the IPS boundaries, it did not locate any of the public housing projects in that territory. Instead, all ten of the public housing projects whose occupancy is 98 percent black were located within IPS. It is obvious that there is a close relationship between the racial balance in housing and the racial balance in schools. As Judge Dillin found in his 1971 opinion, "Low-rent housing projects within the School City have significantly affected the racial composition of the schools." *United States* v. *Board of School Commissioners*, 332 F. Supp. 655, 673 (S. D. Ind. 1971). He reaffirmed this in his most recent decision, "The location of these housing projects by instrumentalities of the State of Indiana has obviously tended to cause and to perpetuate the segregation of black pupils in IPS territory." The record supports these findings and clearly shows a 'purposeful, racially discriminatory use of state housing." *Milliken* v. *Bradley*, 418 U. S. 717, 755 (1974) (Stewart, J., concurring). The Government's statement in its brief supports this view:

> Given that a disproportionate number of blacks are both in low income categories and were already concentrated in IPS and considering the predominantly black composition of the pool of applicants for the H.A.C.I. low-income housing projects, it is a reasonable inference that this action would and did have a further impact upon the racial compositions of schools and school districts in Marion County.

The Housing Authority contends the district court had no authority to enjoin it from building additional public housing

within IPS and from renovating Lockefield Gardens for other than the elderly because the court could not lawfully find a constitutional violation by HACI in confining its housing projects to IPS territory. The evidence presented above, however, is to the contrary.

By locating its projects within IPS and in many cases near all black neighborhoods, the Housing Authority significantly contributed to the disparity in residential and school populations between the inner city and the suburbs. Its acts produced discriminatory effects both within IPS and the suburbs. The relief ordered by the district court was directed to correcting the effects of those past discriminatory acts. Accordingly, the district court did not abuse its discretion in enjoining the Housing Authority from building additional projects within IPS. That part of the injunction that relates to Lockefield Gardens was also proper since permitting it to be used for family housing, where school children are undoubtedly involved, would only further aggravate the school segregation problem.

V.

The Government contends that the mandatory transfer of students between IPS and the suburban schools ordered by the district court is improper. After conceding the import of *Milliken*, the propriety of interdistrict relief, and noting the specific finding of facts found by the district court to have substantially caused segregation in the other districts, the Government concludes the district court's order was an abuse of discretion. We are confused by the Government's reasoning. We fail to see how the district court abused its discretion when it was clearly acting within the guidelines of *Milliken*. It was not an abuse of discretion merely because the Government would have preferred another remedy.

Furthermore, the Government's arguments are inconsistent. On the one hand, it demands that segregation be eliminated

root and branch from within IPS; on the other, it condemns the only relief which can make its demand a reality. We are surprised the Government seriously offers voluntary transfer as an alternative to mandatory transfer as a means to effectuate its goal of complete desegregation. History has taught us that "freedom of choice" plans produce negligible results. *Green* v. *County School Board*, 391 U. S. 430 (1967).

Even if we were to agree with the Government that voluntary transfers are desirable, Indiana law provides no secure mechanism for achieving this result. The Government suggests that voluntary transfers can be made in accordance with Acts 1973, P. L. § 1; I. C. 1971, 20-8.1-6-1, Burns Ind. Stat. Ann. § 28-5001 (1971), which permits transfers under certain conditions.[11] We do not agree, however, that this law is sufficient to provide for the kind of transfers the district court ordered. The language in the statute is permissive and vague (a transfer *may* be granted if the school corporation feels a child may be better accommodated in another school) and does not contemplate transfers for desegregation purposes. We could hardly believe we were carrying out our duty to dismantle segregation root and branch if we were to choose this law to accomplish our goal.

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11. The statute provides:

> Transfer—General order. — The governing body of any school corporation may grant an order of transfer upon proper application by the parent of any child who resides in that corporation if it feels the child may be better accommodated in the public schools of another school corporation of this state or of an adjoining state. In determining whether a child can be better accommodated, such matters as the proximity of the schools to the residence of the child desiring the transfer, the kind and character of the roads, the means of transportation, and the crowded conditions of the school shall all be pertinent. If there is no high school in the school corporation in which a child resides, the governing body shall grant an order of transfer. When a transfer is granted under this section, transfer tuition shall be paid as provided in this chapter.

The limited interdistrict remedy ordered by the district court is supported by the record and in accord [*sic*] the legal principles enunciated in *Milliken.*

In affirming the district court's order, we suggest that the court monitor the transferance of black pupils from IPS to the other school districts periodically, perhaps on a yearly basis, in order that modifications, if necessary, may be made. This is in the hope that segregation and discrimination will be completely eradicated within IPS in furtherance of the goal of equal opportunity proclaimed two hundred years ago in the Declaration of Independence.[12]

AFFIRMED.

Tone, *Circuit Judge,* dissenting.* There are only two possible interdistrict constitutional violations, in view of our decision on the second appeal, *United States* v. *Board of School Commissioners,* 503 F. 2d 68 (7th Cir. 1974), *cert. denied,* 421 U. S. 929 (1975), as the majority recognizes. These two possibilities are Uni-Gov and the Housing Authority's location of public housing, as to both of which the District Court heard evidence and made findings on remand.

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12. Supplementing Judge Tone's footnotes to his dissent, the author of this opinion acknowledges extensive borrowing from Judge Tone's original draft of an opinion, particularly with respect to the factual background of this case. That use made my task easier, and I am indeed grateful.

* The writing of the court's opinion was initially assigned to me, my tentative vote at conference having been to affirm. After I had devoted much time toward the preparation of an opinion, I came to the view reflected in this dissent. The writing of the court's opinion was therefore reassigned to Judge Swygert, who was already burdened with his share of the work of the Seventh Circuit but nevertheless had to find time for this case. While the results of my work on the record, which I made available to him, were I hope of some use in connection with the writing of his opinion, he got a very late start because of the circumstances just described. I recite this intramural history to record the reason for the unusual delay between oral argument and decision and the fact that Judge Swygert is not responsible for that delay.

Whether these state actions violated the Equal Protection Clause depends upon the existence of a racially discriminatory purpose. Disproportionate effect on minorities without discriminatory purpose is not enough. If this was not clear after *James* v. *Valtierra*, 402 U. S. 137 (1971), *Jefferson* v. *Hackney*, 406 U. S. 535, 548-549 (1972), and *Keyes* v. *School District No. 1*, 413 U. S. 189, 208 (1973), it was made so by *Washington* v. *Davis*, 44 U. S. L. W. 4789 (U. S., June 7, 1976). The Court squarely held in the latter case that equal protection is denied only when the state acts with a racially discriminatory purpose:

> "[O]ur cases have not embraced the proposition that a law or other official act, without regard to whether it reflects a racially discriminatory purpose, is unconstitutional *solely* because it has a racially disproportionate impact. [Original emphasis.]
>
> * * * * *
>
> "The school desegregation cases have . . . adhered to the basic equal protection principle that the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose. That there are both predominantly black and predominantly white schools in a community is not alone violative of the Equal Protection Clause.
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> * * * * *
>
> ". . . Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution." 44 U.S.L.W. at 4792, 4793.

The record before us does not contain findings or evidence that the state acted with a racially discriminatory purpose in connection with Uni-Gov or public housing siting.[1] An essential element of an equal protection violation is therefore missing.

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1. The criterion of racially discriminatory purpose is, of course, often not easy to apply. Even if, in any given case, a body such as a legislature or school board can be said to have a collective intent (see R. Dickerson, *The Interpretation and Application of Statutes* 67, *et seq.* (1975)), that intent is often difficult to ascertain. See Justice

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One other governing principle should be noted at the outset. *Milliken* v. *Bradley*, 418 U. S. 717 (1974), in language we are not free to ignore, focused on the constitutional right to be vindicated. Amplifying the statement quoted by the majority that "the scope of the remedy is determined by the nature and extent of the constitutional violation," *id.* at 744, the Supreme Court said two pages later:

> "Disparate treatment of white and Negro students occurred within the Detroit school system, and not elsewhere, and on this record the remedy must be limited to that system. . . .
>
> "The constitutional right of the Negro respondents residing in Detroit is to attend a unitary school system in that district. Unless petitioners drew the district lines in a discriminatory fashion, or arranged for white students residing in the Detroit District to attend schools in Oakland and Macomb Counties, they were under no constitutional duty to make provisions for Negro students to do so. The view of the dissenters, that the existence of a dual system in Detroit can be made the basis for a decree requiring cross-district transportation of pupils, cannot be supported on the grounds that it represents merely the devising of a suitably flexible remedy for the violation of rights already established by our prior decisions. It can be supported only by drastic expansion of the constitutional right itself, an expansion without any support in either

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Powell's concurrence in *Keyes*, 413 U. S. at 217, 233-234. For this reason Justice Stevens, concurring in *Washington* v. *Davis*, observed that "the line between discriminatory purpose and discriminatory impact is not nearly as bright, and perhaps not quite as critical, as the reader of the Court's opinion might assume," and based his concurring vote, in a manner reminiscent of Justice Harlan's concurring opinion in *Hunter* v. *Erickson*, 393 U. S. 385, 393 (1969), on the objective indicia that the governmental action was grounded on neutral principle. In the case at bar, this problem is not as knotty as it often is. Uni-Gov satisfies the neutral principle standard, and the search for collective legislative intent, which able counsel must have made, seems to have turned up no evidence whatsoever of racially discriminatory purpose on the part of anyone responsible for the legislation. The housing siting decisions are in a similar posture.

constitutional principle or precedent." *Id.* at 746-747 (footnote omitted).

That *Milliken* controls here, apart from the additional evidence on Uni-Gov and public housing, was of course recognized in our decision on the second appeal, in which we reversed the portion of the District Court's order calling for interdistrict relief outside the Uni-Gov territory. That decision was a recognition that, in the language of *Milliken*, "[t]he constitutional right of the Negro respondents residing in [IPS] is to attend a unitary school system in that district," *id.*, and an interdistrict remedy is not an appropriate means of vindicating that right. The question now is: What other constitutional rights, violation of which calls for an interdistrict remedy, were shown on remand to have been violated by Uni-Gov and the siting of public housing projects? The majority does not seem to me to answer that question.

The District Court did not find that the legislative decision to exclude IPS from Uni-Gov was racially motivated.[2] The record would not have supported such a finding in view of both the absence of any direct evidence of such a motivation and the presence of such evidence as the historic context of opposition to county-wide school consolidation on non-racial grounds,[3] the

2. Such a finding cannot be inferred from the District Court's statement that by not consolidating the schools under Uni-Gov, the General Assembly "signaled its lack of concern with the whole problem and thus inhibited desegregation with[in] IPS." Apart from doubt about whether there is any evidence that Uni-Gov had an inhibiting effect on desegregation, as distinguished from not promoting desegregation, the court has merely described an effect and not a purpose. A "lack of concern" does not amount to a racially discriminatory purpose. The state, like Michigan in *Milliken*, was under no direct constitutional duty to adopt interdistrict measures, and a duty to act could hardly arise from the fact that failure to act would "signal a lack of concern."

3. There is no evidence, as the majority recognizes, that the opposition to consolidation of Marion County School districts under the Indiana School Reorganization Act of 1959 (Ind. Code § 20-4-1-1, *et seq.*), was racially motivated. Nor is there any evidence that the failure to consolidate after that time or opposition to civil annexation was racially motivated. The District Court, in the course

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decision to leave other government units out of Uni-Gov,[4] the fact that all school boundaries elsewhere in the state were already frozen, and the non-racial reasons and the haphazard fashion in which civil annexation had taken place in the past, which had done nothing to establish rational school boundaries.[5] The appellees do not argue that the evidence shows a racially discriminatory purpose. In their briefs, filed before the decision in *Washington* v. *Davis*, the government assumes, and the intervening plaintiffs argue, that such a purpose need not be shown.

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of the hearing on remand after our decision on the second appeal, spoke of the purpose of certain exhibits as being offered "to prove or tend to prove that the present division of Marion County into eleven separate school districts is something that happened because of reasons pertaining primarily to school finances as well as to the desire of non-IPS schools to maintain local autonomy rather than for reasons of separating students based on race. . . . I presume that if the Government or the intervening plaintiffs had some evidence to the contrary that they would be cross-examining, or examining along those lines." [March 1975 Tr., Vol. III, pp. 359-360.] Neither the government nor the intervening plaintiffs offered any "evidence to the contrary" or cross-examined along the lines referred to.

4. Among those other governmental units were the Airport Authority, the Health and Hospital Corporation, the County Department of Welfare, the Building Authority, and the Library Districts. See Ind. Code § 18-4-3-14. The so-called "excluded cities" of Speedway, Perry and Lawrence [sic] retained their own local governments, which provide municipal services in those areas, although Uni-Gov has the responsibility even in those areas for air pollution regulation, building code enforcement, municipal planning, and thoroughfare control.

5. The record indicates that the reasons for this and the resulting irregularities in the boundaries of Indianapolis were that in many instances residents protested annexation because they felt the city would not provide them with services commensurate with the additional tax money they would be paying (not an uncommon reason for opposition to annexation by municipalities large and small throughout the country), and in other instances commercial developers sought and gained the annexation of land they owned because they wanted benefits that could be obtained through annexation. Thus whether this land was annexed depended in large part upon the position taken by the owners of the land affected. [March 1976 Tr., Vol. II, pp. 219-220.]

A search in the opinion of this court's majority for a finding of racially discriminatory purpose will be unproductive. The majority finds (text at notes 9 and 10) that the General Assembly did not want IPS boundaries to expand with the city boundaries whether or not Uni-Gov was adopted[6] but does not follow with a statement that this desire or the actions effectuating it were racially motivated. Instead it goes on to state, citing *Milliken*, that "Uni-Gov and its companion 1969 legislation were 'a substantial cause of interdistrict segregation' . . . and 'contributed to the separation of the races by . . . redrawing school lines. . . .'"[7] But under *Milliken*, as explained in *Washington* v. *Davis*, cause and effect are not enough. A racially discriminatory purpose is necessary. The closest the majority comes to finding a racially discriminatory purpose is in the abstract statement, at the end of the paragraph containing the three hypotheticals, that "a city should not be permitted to extend its boundaries in order to avoid desegregation." I believe that if this court intended to find as a fact that Uni-Gov was adopted with a racially discriminatory purpose, in the face of the failure of the District Court to find, and of the appellees to argue, that there was such a purpose, it would do so directly and state the evidentiary basis for that finding. As stated above, I believe there is no such basis in the record.

The majority attempts to avoid the necessity of finding discriminatory purpose by postulating an affirmative duty to desegregate under *Green* v. *County School Board*, 391 U. S.

6. This inference is drawn from the adoption of Chapter 52, 1969 Acts (Ind. Code § 20-3-14-9) seven days before the adoption of Uni-Gov and the adoption of Chapter 239, 1969 Acts (Ind. Code § 18-5-10-25). The effect of these two acts was to eliminate the automatic expansion of IPS boundaries to match the expansion of city boundaries and to limit remonstrances against annexations. These acts were rendered nugatory by the adoption of Uni-Gov.

7. Failing to redraw the school district lines does not seem to me to be "redrawing school district lines," but this is not important to an analysis of the problem, because the controlling question is whether, however the legislature's action is described, it was taken with a racially discriminatory purpose.

430 (1968), and the Indiana statutes. It is doubtful that the Indiana legislature could impose on itself by statute the duty to pass additional statutes, and, if it could, violation of such a duty would not give rise to a federal constitutional claim. *Milliken's* teaching is that the state's constitutional duty under *Green* is commensurate with the violation, which, apart from the Uni-Gov events themselves, was a violation of the right to attend a unitary school system within IPS. Under *Milliken,* there can be no affirmative duty to use interdistrict means to remedy intradistrict violations; for if such a duty existed, the State of Michigan surely violated it in that case, which would have mandated the interdistrict remedy rejected by the Supreme Court, and there was no reason in the case at bar to exclude the territory outside Uni-Gov from the scope of our remand on the second appeal.

Evans v. *Buchanan,* 393 F. Supp. 428 (D. Del. 1975), *aff'd,* 96 S. Ct. 381 (1975), on which the majority relies, does not in my opinion support affirmance. That case, unlike the case at bar, involved a prior interdistrict violation mandating the adoption of interdistrict measures by state authorities. The district court opinion in *Evans* shows *de jure* segregation before *Brown* v. *Board of Education,* 347 U. S. 483 (1954), was practiced on an interdistrict basis in the Wilmington area. 393 F. Supp. at 437. The state failed to carry its burden of showing that these past acts of segregation had become so attenuated that "the current segregation is in no way the result of those past segregation actions," *Keyes* v. *School District No. 1, supra,* 413 U. S. at 211, n. 17; in fact, post-*Brown* acts contributed to continued interdistrict segregation, see 393 F. Supp. at 434-436. Consequently, there was an affirmative duty to remedy the interdistrict violation, and the Delaware reorganization statute, by barring consolidation as a way of doing so, "contravene[d] the implicit command of *Green* v. *County School Board* . . . that all reasonable methods be available to formulate an effective remedy." *North Carolina State Board of Education* v. *Swann,* 402 U. S. 43, 46 (1971).

The majority relies on the "racial impact" theory espoused by the district court in *Evans*. The summary affirmance of the three-judge district court's judgment does not necessarily imply approval of that court's reasoning, and that reasoning clearly cannot stand after *Washington* v. *Davis*.

In short, there is no finding and no evidence that the exclusion of IPS from Uni-Gov was racially motivated, and by all objective criteria Uni-Gov was racially neutral state action. Uni-Gov left untouched the boundaries of IPS, which had been established for racially neutral reasons. The changes in civil boundaries and reallocations of civil governmental functions made by Uni-Gov had no effect on the constitutional rights of school children in IPS.

Public Housing

The District Court, while unconvinced by the reasons given for the selection by the Housing Authority of certain sites near the periphery of the City of Indianapolis, made no findings that any of the Housing Authority's decisions were racially motivated. As the majority notes, under federal statute (42 U. S. C. § 1415(7)(b)(i)) and HUD guidelines, the Housing Authority could not obtain federal funds for a project in the absence of a cooperation agreement with the local governmental authority obligating the latter to provide essential governmental services; and as the District Court found, "Suburban Marion County officials have refused to cooperate with HUD on the location of such projects." It is apparent from the record and the District Court's findings that this was the real reason housing projects were built only within the City of Indianapolis before the effective date of Uni-Gov. There was no finding and no evidence that the refusals were racially motivated. Failure of local authorities to enter into these agreements, without more, does not give rise to an inference of racially discriminatory purpose, even though the projects are to be occupied by large numbers of blacks. See *James* v. *Valtierra, supra,* 402 U. S. at 141; see also *Metro-*

politan Housing Development Corp. v. *Village of Arlington Heights*, 517 F. 2d 409, 412-413 (7th Cir. 1975), *cert. granted*, 96 S. Ct. 560 (1975). As these cases hold, the state's location of low-rent housing projects for racially neutral reasons, even though it has a disparate effect on minority groups is not subject to strict scrutiny. *James* v. *Valtierra*, *supra*, 402 U. S. at 141; *Metropolitan Housing Development Corp.* v. *Village of Arlington Heights*, *supra*, 517 F. 2d at 413.[8] As the majority notes, the record is silent as to why no housing projects were commenced within IPS since the effective date of Uni-Gov. Absent a showing of discriminatory intent, I find no ground on which to sustain the injunction against the Housing Authority.

Relief

In the absence of an interdistrict violation, there should be no interdistrict relief against the school corporation defendants. If I believed the majority were correct in finding interdistrict violations, I would agree that the remedy ordered by the District Court is within its discretion and would not have this court substitute its discretionary judgment for that of the District Court

8. The majority does not rely on other acts of the state and private parties that had the effect of confining blacks to the IPS area, to which the brief of the United States refers. These acts which include recording racial covenants, discriminatory FHA loan practices and private discrimination by brokers, sellers, and others, were referred to by the District Court as "customs and usages of both the officials and inhabitants of such areas" which "discourage[d] blacks from seeking to purchase or rent homes therein, all as shown in detail in previous opinions of this Court." While the District Court was no doubt correct in this statement, the findings referred to and the evidence supporting it were all in the record at the time of the last appeal, when we held that *Milliken* precluded relief outside Marion County, and are similar to findings and evidence in *Milliken*. See 418 U. S. at 724, 728 n. 7. If these facts had sufficed to justify an interdistrict remedy, the Supreme Court in *Milliken* would presumably either have affirmed on the familiar principle that a reviewing court will affirm on any basis supported by the record, even if not relied on by the lower court, or else would have remanded for further consideration of the housing issue. See, *e.g.*, *Dandridge* v. *Williams*, 397 U. S. 471, 475 n. 6 (1970).

by ordering only the voluntary-transfer remedy urged by the government. In this connection, I do note that even when no constitutional violation has occurred, Indiana law provides relief to a student who is prevented by school district lines from attending the school nearest his home, Ind. Code § 20-8.1-6-1, *et seq.*, and the school authorities seem to be obligated to grant such relief. *State ex rel. Smitherman* v. *Davis*, 283 Ind. 563, 571, 151 N. E. 2d 495, 498 (1958).

I further believe that since the Housing Authority, unlike HUD in *Hills* v. *Gautreaux*, 44 U. S. L. W. 4480 (U. S. April 20, 1976), has not been found to have engaged in purposefully discriminatory and therefore unconstitutional conduct, no relief against that agency is warranted.

UNITED STATES DISTRICT COURT,
Southern District of Indiana,
Indianapolis Division.

No. IP 68-CA-225.

UNITED STATES OF AMERICA,

Plaintiff,

DONNY BRURELL BUCKLEY, ALYCIA MARQUESE BUCKLEY, by their parent and next friend, Ruby L. Buckley, on behalf of themselves and all Negro school age children residing in the area served by original defendants herein,

Intervening Plaintiffs,

vs.

THE BOARD OF SCHOOL COMMISSIONERS OF THE CITY OF INDIANAPOLIS, INDIANA; KARL R. KALP, as Superintendent of Schools; MARTHA MCCARDLE, as President of The Board of School Commissioners; WILLIAM M. S. MYERS, CARL J. MEYER, PAUL E. LEWIS, LESTER E. NEAL, CONSTANCE R. VALDEZ, W. FRED RATCLIFF, Members of The Board of School Commissioners of the City of Indianapolis,

Defendants,

OTIS R. BOWEN, as Governor of the State of Indiana; THEODORE SENDAK, as Attorney General of the State of Indiana; HAROLD H. NEGLEY, as Superintendent of Public Instruction of the State of Indiana; THE METROPOLITAN SCHOOL DISTRICT OF DECATUR TOWNSHIP, MARION COUNTY, INDIANA; THE FRANKLIN TOWNSHIP COMMUNITY SCHOOL CORPORATION, MARION COUNTY, INDIANA; THE METROPOLITAN SCHOOL DISTRICT OF LAWRENCE TOWNSHIP, MARION COUNTY, INDIANA; THE METROPOLITAN SCHOOL DISTRICT OF PERRY TOWNSHIP, MARION COUNTY, INDIANA; THE METROPOLITAN SCHOOL DISTRICT OF PIKE TOWNSHIP, MARION COUNTY, INDIANA; THE METROPOLITAN SCHOOL DISTRICT OF WARREN

TOWNSHIP, MARION COUNTY, INDIANA; THE METROPOLITAN SCHOOL DISTRICT OF WASHINGTON TOWNSHIP, MARION COUNTY, INDIANA; THE METROPOLITAN SCHOOL DISTRICT OF WAYNE TOWNSHIP, MARION COUNTY, INDIANA; SCHOOL CITY OF BEECH GROVE, MARION COUNTY, INDIANA; SCHOOL TOWN OF SPEEDWAY, MARION COUNTY, INDIANA; THE METROPOLITAN DEVELOPMENT COMMISSION OF MARION COUNTY; THE HOUSING AUTHORITY OF THE CITY OF INDIANAPOLIS; THE INDIANA STATE BOARD OF EDUCATION, a public corporate body;

Added Defendants,

CITIZENS FOR QUALITY SCHOOLS, INC.;

Intervening Defendant,

COALITION FOR INTEGRATED EDUCATION;

Amicus Curiae.

THE BOARD OF SCHOOL COMMISSIONERS OF THE CITY OF INDIANAPOLIS, INDIANA,

Cross-Claimants,

vs.

THE METROPOLITAN DEVELOPMENT COMMISSION OF MARION COUNTY; THE HOUSING AUTHORITY OF THE CITY OF INDIANAPOLIS,

Cross-Defendants.

MEMORANDUM OF DECISION.

This case comes before the Court for further hearing, pursuant to the direction of the Court of Appeals for the Seventh Circuit. 503 F. 2d 68 (1974) cert. den. ..... U. S. ....., 43 USLW 3571 (April 21, 1975). The previous history of the case, and of various related actions, is fully set out at 503 F. 2d 71-75, and will not be repeated here. The names of certain defendants sued in a representative capacity, and whose terms have expired, have been deleted and their successors substituted.

This Court was specifically directed to determine whether the establishment of the Uni-Gov boundaries of the City of Indianap-

olis[1] without a like re-establishment of Indianapolis Public Schools boundaries warrants an interdistrict remedy within Uni-Gov in accordance with *Milliken* v. *Bradley*, 418 U. S. 717, 94 S. Ct. 3112, 41 L. Ed. 2d 1069 (1974). Pursuant to such direction, a further evidentiary hearing was held, beginning March 18, 1975, and the parties have submitted both oral argument and briefs, all of which have been considered. The Court has also given consideration to other matters raised by the pleadings and evidence, and to matters of Indiana Law, all as will more fully appear.

The defendant Board of School Commissioners (IPS) on September 29, 1971, brought into the case as additional defendants, The Metropolitan Development Commission of Marion County (Commission) and The Housing Authority of the City of Indianapolis (HACI), and by way of a cross-complaint charged them with implementing policies which contributed to the segregation of IPS. Declaratory relief was demanded. These issues were not taken up heretofore, but in its pretrial entry of December 13, 1974 the Court ruled that, in addition to the Uni-Gov issue, the issue of the effect, if any, of the housing and zoning laws, rules, regulations and customs in Marion County, Indiana and its various political subdivisions upon the de jure segregation of IPS, would be considered. The greater part of the evidence introduced at the March hearing was on the latter subject.

The issue regarding housing and zoning laws was not mooted by *Milliken*. To the contrary, the concurring opinion of Mr.

1. The boundaries of the city, pursuant to Uni-Gov, are co-extensive with the boundaries of Marion County, except that the cities of Beech Grove and Lawrence ("excluded cities") and the unincorporated town of Speedway ("excluded town") are permitted to carry on as separate municipal corporations within the territory of the consolidated City of Indianapolis. Citizens of these communities have a dual status—for example, a Beech Grove voter may vote for Mayor of Indianapolis, members at large of the City County Council, Mayor of Beech Grove, and city councilmen of Beech Grove.

Justice Stewart, which constituted the decisive vote as between an otherwise evenly balanced Court, stated, "Were it to be shown . . . that state officials had contributed to the separation of the races by drawing or redrawing school district lines . . .; or by purposeful, racially discriminatory use of state housing or zoning laws, then a decree calling for transfer of pupils across district lines or for restructuring of district lines might well be appropriate." 418 U. S. at 755.

The evidence is undisputed that each and every public housing project constructed and operated by the added defendant HACI is located within IPS territory, in some instances just across the street from territory served by one of the added defendant school corporations. Each of such locations was approved—in some instances selected in the first place—by the added defendant Commission. The latter institution has had county-wide zoning jurisdiction at all times during the construction of 10 out of the 11 public housing projects for families, and HACI has at all times had the authority to erect public housing within the City of Indianapolis, and within five miles of the corporate limits of such city. The residents of said public housing projects are approximately 98% black (except in projects for the elderly), and their children all attend school in IPS. The location of these housing projects by instrumentalities of the State of Indiana has obviously tended to cause and to perpetuate the segregation of black pupils in IPS territory.

The evidence in the record, as taken in all hearings, clearly shows that the suburban Marion County units of government, including the added defendant school corporations, have consistently resisted the movement of black citizens or black pupils into their territory. They have resisted school consolidation, they resisted civil annexation so long as civil annexation carried school annexation with it, they ceased resisting civil annexation only when the Uni-Gov act made it clear that the schools would not be involved. Suburban Marion County has resisted the erection of public housing projects outside IPS territory, suburban

Marion County officials have refused to cooperate with HUD on the location of such projects, and the customs and usages of both the officials and inhabitants of such areas has been to discourage blacks from seeking to purchase or rent homes therein, all as shown in detail in previous opinions of this Court.

In its most recent opinion, 503 F. 2d at 80, the Court of Appeals specifically concluded, with this Court, that state officials of the State of Indiana "have, by various acts and omissions, promoted segregation and inhibited desegregation within IPS, so that the state, as the agency ultimately charged under Indiana law with the operation of the public schools, has an affirmative duty to assist the IPS Board in desegregating IPS within its boundaries. . . ." Inasmuch as certiorari has been denied by the Supreme Court, the finding that the State has promoted segregation and inhibited desegregation within IPS is, quite obviously, the law of the case. The new findings of this Court that the Commission and HACI have been guilty of such acts simply amplifies such earlier findings. The action of these agencies in confining poor blacks to the inner city has directly and proximately contributed to cause the suburban school districts within Marion County, other than Washington Township and Pike Township, to be and remain segregated white schools, with segregated white faculties and administrative staffs.

The evidence clearly shows that at the time of the passage of the Uni-Gov Act in 1969, various annexation plans and school consolidation plans had bogged down on the local level because of the aforementioned opposition of the suburban school corporations within Marion County, and their patrons. However, the General Assembly of Indiana, with its members elected on a state-wide basis, was not, or should not have been, subservient to local pressures, and undoubtedly could have legislated a county-wide school system for Marion County as easily as it legislated a county-wide civil government. Under existing law, both Federal as expressed in *Brown* v. *Board of*

Education, 349 U. S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955), and in *Green* v. *County School Board*, 391 U. S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968), and the law of Indiana as expressed in Acts 1949, Ch. 186, p. 603, Burns Ind. Stat. Ann. §§ 28-6106-28-6112 (1970), it had a duty to alleviate the segregated condition then existing in IPS. When the General Assembly expressly eliminated the schools from consideration under Uni-Gov, it signaled its lack of concern with the whole problem and thus inhibited desegregation with [*sic*] IPS.

The Court finds that the establishment of the Uni-Gov boundaries without a like re-establishment of IPS boundaries, given all of the other facts and circumstances set out in this and former opinions of this Court, warrants a limited inter-district remedy within all of Marion County, Indiana, as hereafter described.

Recently, the General Assembly has taken some steps to meet its duty under the law—specifically by passing P. L. 94 of the Acts of 1974, Burns Ind. Stat. Ann. §§ 28-5031-28-5040, I. C. 1971, 20.-8.1-6.5-1, et seq., as added 1974. The Court of Appeals in its opinion at 503 F. 2d 74 refers to this statute as "rigidly limited in its application," which may well be, but in any event it does expressly recognize the power both of United States district courts and of the courts of the State to make orders regarding the transfer of pupils from one school corporation to another if certain conditions be found to exist, and affords a State policy and means for paying the costs of such inter-district relief, all of which was lacking in *Milliken*.

Specifically, the statute provides a means and method whereby a transferor school corporation may pay a transferee school corporation for the cost of education of a pupil transferred from the one to the other in compliance with a court order issued under the following conditions:

(1) In a suit where the transferor or transferee corporation or corporations are parties, the Court must have found the following:

(a) A transferor corporation has violated the equal protection clause of the Fourteenth Amendment to the Constitution of the United States by practicing de jure racial segregation of the students within its borders;

(b) A unitary school system within the meaning of such amendment cannot be implemented within the boundaries of the transferor corporation; and

(c) The Fourteenth Amendment compels the Court to order a transferor corporation to transfer its students for education to one or more transferee corporations to effect a plan of desegregation in the transferor corporation which is acceptable within the meaning of such amendment.

In the case at hand, we have a suit in which all of the school corporations in Marion County, Indiana are parties, and in which this Court has made, and now reiterates, the following findings:

(a) The defendant Board of School Commissioners of Indianapolis, Indiana (IPS) has violated the equal protection clause of the Fourteenth Amendment to the Constitution of the United States by practicing de jure racial segregation of the students within its borders. *United States* v. *Board of Sch. Com'rs, Indianapolis, Ind.*, 332 F. Supp. 655 (S. D. Ind. 1971), aff'd 474 F. 2d 81 (7 Cir.), cert. den. 413 U. S. 920, 93 S. Ct. 3066, 37 L. Ed. 2d 1041 (1973).

(b) A unitary school system within the meaning of such amendment cannot be implemented within the boundaries of IPS. "In the long haul, it won't work." 332 F. Supp. at 678.

This Court found as a fact in its opinion of July 20, 1973, 368 F. Supp. 1197, et seq., that within the IPS boundaries resegregation of desegregated schools occurs when the percentage of black students in a given school approaches 25% to 30%, more or less. That finding has not been challenged by anyone. Therefore, in a school corporation in which the percentage of black pupils has now reached more than 42% over all, and with the Court of Appeals having ordered this Court

to take further steps to desegregate the same, 503 F. 2d 80, the Court is placed in an impossible situation unless the transfer for education of a substantial number of black IPS pupils to school corporations other than IPS is accomplished.

The Court therefore makes the following additional finding:

(c) The Fourteenth Amendment compels the Court to order IPS to transfer a substantial number of its black students to various added defendant school corporations for education in order to effect a plan of desegregation in the transferor corporation which is acceptable within the meaning of such amendment.

The Court of Appeals has called the attention of this Court to the rule of law that "white flight" is not an acceptable reason for failing to dismantle a dual school system. 503 F. 2d 80, citing *United States* v. *Scotland Neck City Board of Education*, 407 U. S. 484, 491, 92 S. Ct. 2214, 2218, 33 L. Ed. 2d 75 (1970). However, it does not follow that this Court must ignore the probability of white flight in attempting to formulate guidelines for IPS to follow in accomplishing the final desegregation of its schools. In other words, as this Court sees it, white flight may not be used as an excuse for inaction; it may, however, supply the reason for a particular kind of action.

This approach requires the Court, once again, to review applicable statistics. "The Constitution does not compel any particular degree of racial balance or mixing, but when past and continuing constitutional violations are found, some ratios are likely to be useful starting points in shaping a remedy . . ." *North Carolina Bd. of Ed.* v. *Swann*, 402 U. S. 43, 91 S. Ct. 1284, 28 L. Ed. 586 2d (1971).

For the school year 1974-75, there were 77,732 pupils enrolled in IPS, excluding kindergarten and special education students. Of these 44,756, or 57.57%, were white and 32,976, or 42.43%, were black. Virtually all schools had an enrollment of at least 15% black pupils, and 19 elementary schools and one high school had enrollments in excess of 80% black. As

the Court understands the order of the Court of Appeals, this group of 20 schools must be further desegregated. As stated above, this Court has previously found that to require all schools to enroll about 42.43% black pupils would immediately accelerate white flight and unbalance the entire system beyond saving. The Court respectfully declines to stultify itself by giving any such direction.

The Metropolitan School Districts of Washington Township and Pike Township are integrating rather rapidly, as a result of demographic changes, so that Washington had a black percentage of approximately 15% and Pike a black percentage of approximately 12% for the past school year. These percentages seem likely to increase for the coming year. If the percentage of black students in the other suburban districts within Marion County were equivalent to that of Washington Township, approximately 9,525 black students would need to be transferred to such districts. The Court finds that the Fourteenth Amendment compels it to order IPS to transfer, and for the added defendant school corporations, other than Pike and Washington, to receive approximately such number of black students, over a period of time, in order to effect a plan of desegregation within IPS which is acceptable within the meaning of such amendment.

Transfers shall not include kindergarten nor special education students, and such students shall not be counted for the purpose of determining the number of transferees to each school corporation. Further, for the school year 1975-76, transfers will be limited to students in grades 1-9, inclusive, for a total of about 6,533 students, with the understanding that a student once transferred to a suburban school corporation will continue in such corporation until graduation from high school, unless the residence of such student is moved from IPS.

The number of students to be transferred to a particular school corporation shall be in such number as to cause the total enrollment of pupils in such school corporation, after the transfers have been accomplished, to be approximately 15% black. As an example, Beech Grove City Schools for the school year

1974-75 had an all white enrollment of 1,865 in grades 1-9, excluding special education. The 1,865 should be 85% of the school population after transfer; therefore 1% would be 21.9411, and 15% would be 15 x 21.9411 or 329. Approximately 329 black students would be transferred from IPS to Beech Grove in grades 1-9 for the coming school year. For the ensuing years, the original transferees would continue in the Beech Grove schools, and a new first grade group in an appropriate number would be transferred. Transfers by grade should be proportionate to the number of students enrolled per grade in the transferee schools for the past school year. Fortunately, the reports on classroom space filed by the added defendants reflects that, without exception, there is ample space available in which to house the transferees; also, IPS has ample transportation facilities available.

It is possible that transfers of black students to Washington Township should be made for education at the J. Everett Light Career Center; ruling on this point is reserved pending clarification as to certain statistical information in the record.

With regard to the present transfer of pupils, as above described and as will be more particularly set out in an accompanying order and judgment, the respective superintendents of the transferee school corporations involved, or their nominees, are directed to meet with the superintendent of IPS, or his nominees, forthwith in order to work out the exact names, numbers, and grades of pupils to be transferred. Reasonable deviations from exact statistical scheduling are anticipated, and may be agreed upon, subject to the approval of the Court. Disagreements, if any, shall be promptly referred to the Court for resolution. The transfers shall be effective, and transfer of pupils shall begin on the first day of the 1975-76 school year at each of the various transferee schools.

Once the transfer pupils have been identified, the defendant IPS is directed to submit to the Court a final plan for desegregation of the remaining schools within IPS. Alternate plans may

be submitted, in the discretion of IPS. Such plan or plans shall consider the high schools, as well as elementary schools. Kindergarten students and special education students need not be taken into account in computing black-white ratios in the various schools. Such plan or plans shall be submitted on or before October 15, 1975 and, if one be approved, it shall be put into effect at the beginning of the second semester of the 1975-76 school year, except as the Court may otherwise order.

As previously found, the location by HACI of all of its public housing facilities within IPS territory has had a major influence toward keeping black students confined within IPS, while at the same time keeping the suburban school systems virtually all white. Such conduct should and will be enjoined, so as to prohibit HACI from locating any additional public housing units within the boundaries of IPS. Furthermore, HACI should and will be enjoined from reopening Lockefield Gardens, a public housing project which is now vacant, to tenants other than the elderly.

The case for the intervening Buckley plaintiffs and their class was filed and has been presented by John O. Moss and John Preston Ward. The Court previously found them entitled to recover their reasonable attorneys fees and expenses, pursuant to 20 U. S. C. § 1617, but no fees have as yet been awarded, and the Court of Appeals has requested a further finding on the issue. 503 F. 2d 86. It is the Court's opinion that the Buckley plaintiffs should be regarded as the "prevailing parties," within the meaning of such statute, if the rulings of this Court relating to transfer of pupils become final, since they are the only parties who have contended for a remedy going beyond the IPS strait jacket.

Orders will be entered in accordance with this memorandum.

Dated this 1st day of August, 1975.

/s/ S. HUGH DILLIN,
S. Hugh Dillin,
Judge.

UNITED STATES DISTRICT COURT,
Southern District of Indiana,
Indianapolis Division.

* * (Title Omitted in Printing) * *

JUDGMENT.

The Court having this day filed a memorandum of decision in the above entitled action (Indianapolis IV), containing various findings requiring orders and judgments, such orders and judgments are hereinafter set out.

Recognizing that some or all of the parties to this proceeding may wish to appeal the judgments entered herein by this Court as to them, and as a convenience to all parties, this Court will designate by separate subnumber that particular judgment directed against each particular defendant or defendants, in order that the parties appealing may properly designate in any notice of appeal filed herein that particular judgment or judgments so appealed. The defendant The Board of School Commissioners of the City of Indianapolis, Indiana will be referred to as "IPS."

a. IP 68-C-225A. It is ordered and adjudged that IPS is directed to transfer to The Metropolitan School District of Decatur Township, Marion County, Indiana, 567 negro students to be enrolled in grades 1-9 for the 1975-76 school year, and to make continuing transfers of such students for ensuing school years, until the further order of the Court. Said transferee school corporation is ordered to accept such transfer students and enroll them accordingly. All of the foregoing shall be accomplished in accordance with the applicable provisions of said Memorandum of Decision, which are incorporated in this subparagraph as if set forth herein.

b. IP 68-C225B. It is ordered and adjudged that IPS is directed to transfer to The Franklin Township Community

School Corporation, Marion County, Indiana, 326 negro students to be enrolled in grades 1-9 for the 1975-76 school year, and to make continuing transfers of such students for ensuing school years, until the further order of the Court. Said transferee school corporation is ordered to accept such transfer students and enroll them accordingly. All of the foregoing shall be accomplished in accordance with the applicable provisions of said Memorandum of Decision, which are incorporated in this subparagraph as if set forth herein.

c. IP 68-C225C. It is ordered and adjudged that IPS is directed to transfer to The Metropolitan School District of Lawrence Township, Marion County, Indiana, 930 negro students to be enrolled in grades 1-9 for the 1975-76 school years, and to make continuing transfers of such students for ensuing school years, until the further order of the Court. Said transferee school corporation is ordered to accept such transfer students and enroll them accordingly. All of the foregoing shall be accomplished in accordance with the applicable provisions of said Memorandum of Decision, which are incorporated in this subparagraph as if set forth herein.

d. IP 68-C-225D. It is ordered and adjudged that IPS is directed to transfer to The Metropolitan School District of Perry Township, Marion County, Indiana, 1,555 negro students to be enrolled in grades 1-9 for the 1975-76 school year, and to make continuing transfers of such students for ensuing school years, until the further order of the Court. Said transferee school corporation is ordered to accept such transfer students and enroll them accordingly. All of the foregoing shall be accomplished in accordance with the applicable provisions of said Memorandum of Decision, which are incorporated in this subparagraph as if set forth herein.

e. IP 68-C-225E. It is ordered and adjudged that IPS is directed to transfer to The Metropolitan School District of Warren Township, Marion County, Indiana, 1,206 negro students to be enrolled in grade 1-9 for the 1975-76 school year,

and to make continuing transfers of such students for ensuing school years, until the further order of the Court. Said transferee school corporation is ordered to accept such transfer students and enroll them accordingly. All of the foregoing shall be accomplished in accordance with the applicable provisions of said Memorandum of Decision, which are incorporated in this subparagraph as if set forth herein.

f. IP 68-C-225F. It is ordered and adjudged that IPS is directed to transfer to The Metropolitan School District of Wayne Township, Marion County, Indiana, 1,383 negro students to be enrolled in grades 1-9 for the 1975-76 school year, and to make continuing transfers of such students for ensuing school years, until the further order of the Court. Said transferee school corporation is ordered to accept such transfer students and enroll them accordingly. All of the foregoing shall be accomplished in accordance with the applicable provisions of said Memorandum of Decision, which are incorporated in this subparagraph as if set forth herein.

g. IP 68-C-225G. It is ordered and adjudged that IPS is directed to transfer to the School City of Beech Grove, Marion County, Indiana, 329 negro students to be enrolled in grades 1-9 for the 1975-76 school year, and to make continuing transfers of such students for ensuing school years, until the further order of the Court. Said transferee school corporation is ordered to accept such transfer students and enroll them accordingly. All of the foregoing shall be accomplished in accordance with the applicable provisions of said Memorandum of Decision, which are incorporated in this subparagraph as if set forth herein.

h. IP 68-C-225H. It is ordered and adjudged that IPS is directed to transfer to the School Town of Speedway, Marion County, Indiana, 237 negro students to be enrolled in grades 1-9 for the 1975-76 school year, and to make continuing transfers of such students for ensuing school years, until the further order of the Court. Said transferee school corporation is ordered

to accept such transfer students and enroll them accordingly. All of the foregoing shall be accomplished in accordance with the applicable provisions of said Memorandum of Decision, which are incorporated in this subparagraph as if set forth herein.

i. IP 68-C-225I. It is ordered and adjudged that IPS prepare and file with the Court, on or before October 15, 1975, a plan, or alternative plans, for the final desegregation of its schools, taking into account the transfer of pupils ordered herein.

j. IP 68-C-225J. It is ordered and adjudged that The Housing Authority of the City of Indianapolis be, and it is permanently enjoined from constructing or in any manner acquiring any structure within the area served by IPS for the purpose of offering the same, or any parts or portions thereof, for rent as a family type public housing project.

k. IP 68-C-225K. It is ordered and adjudged that The Housing Authority of the City of Indianapolis be, and it is permanently enjoined from renovating its presently owned public housing project known as Lockefield Gardens for use as a family type public housing project, or to utilize the same, or any parts or portions thereof, for such purpose. Nothing herein contained shall be construed as enjoining the use of such structure for public housing for the elderly.

The Court retains continuing jurisdiction of this action, and the parties thereto, together with the right to modify or supplement any orders or judgments herein or heretofore made.

Dated this 1st day of August, 1975.

/s/ S. HUGH DILLIN,
S. Hugh Dillin,
Judge.

JUDGMENT SOUGHT TO BE REVIEWED.

Opinion by Judge Swygert
(Judge Tone dissenting)

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

July 16, 1976

Before

HON. THOMAS E. FAIRCHILD, *Chief Judge*
HON. LUTHER M. SWYGERT, *Circuit Judge*
HON. PHILIP W. TONE, *Circuit Judge*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

DONNY BRURELL BUCKLEY, et al., etc.,
Intervening Plaintiffs-Appellees,

Nos. 75-1730 through 75-1737, 75-1765, 75-1936, 75-1964, 75-1965, and 75-2007

vs.

BOARD OF COMMISSIONERS OF CITY OF INDIANAPOLIS, INDIANA, et al.,
Defendants-Appellants.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. IP-68-C-225

S. Hugh Dillin, Judge.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Indiana, Indianapolis Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this date.

NOTICES OF APPEAL.

IN THE UNITED STATES COURT OF APPEALS,
For the Seventh Circuit.

(Filed U. S. C. A.—7th Circuit, July 26, 1976,
Thomas F. Strubbe, Clerk)

• • (Captions Omitted in Printing) • •

NOTICE OF APPEAL OF THE METROPOLITAN SCHOOL DISTRICTS OF LAWRENCE, WARREN AND WAYNE TOWNSHIPS, MARION COUNTY, INDIANA.

Notice is hereby given that The Metropolitan School Districts of Lawrence, Warren and Wayne Townships, Marion County, Indiana, Added Defendants-Appellants, hereby appeal to the Supreme Court of the United States from the judgment of the United States Court of Appeals for the Seventh Circuit, entered on July 16, 1976, which held that Chapter 173 of the 1969 Acts of the Indiana General Assembly and its "companion legislature", Chapters 52 and 239 of the 1969 Acts of the Indiana General Assembly, were "a substantial cause of inter-district segregation" and a violation of the Equal Protection Clause of the Fourteenth Amendment.

This appeal is taken pursuant to 28 U. S. C. § 1254(2).

/s/ WILLIAM M. EVANS,
William M. Evans,
/s/ LEWIS C. BOSE,
Lewis C. Bose,
Attorneys for Added Defendants-Appellants The Metropolitan School Districts of Lawrence, Warren and Wayne Townships, Marion County, Indiana.

Of Counsel:
BOSE MCKINNEY & EVANS,
1100 First Federal Building,
Indianapolis, Indiana 46204,
(317) 637-5353.

NOTICE OF APPEAL BY THE METROPOLITAN SCHOOL DISTRICT OF DECATUR TOWNSHIP, MARION COUNTY, INDIANA.

Notice is hereby given that The Metropolitan School District of Decatur Township, Marion County, Indiana, Added Defendtan-Appellant, hereby appeals to the Supreme Court of the United States from the judgment of the United States Court of Appeals for the Seventh Circuit, entered on July 16, 1976, which held that Chapter 173 of the 1969 Acts of the Indiana General Assembly and its "companion legislation," Chapters 52 and 239 of the 1969 Acts of the Indiana General Assembly, were "a substantial cause of interdistrict segregation" and a violation of the Equal Protection Clause of the Fourteenth Amendment, and which affirmed the judgment and order of the United States District Court for the Southern District of Indiana, Indianapolis Division, dated August 1, 1975.

This appeal is taken pursuant to 28 U. S. C. § 1254, paragraph (2).

/s/ CHARLES W. HUNTER,
Charles W. Hunter,
Attorney for Added Defendant-Appellant The Metropolitan School District of Decatur Township, Marion County, Indiana.

CHARLES W. HUNTER,
810 King Cole Building,
Indianapolis, Indiana 46204,
Telephone: (317) 637-2411.

NOTICE OF APPEAL BY THE METROPOLITAN SCHOOL DISTRICT OF FRANKLIN TOWNSHIP, MARION COUNTY, INDIANA.

Notice is hereby given that Franklin Township Community School Corporation, an added defendant above named, hereby appeals to the Supreme Court of the United States from the judgment of the United States Court of Appeals for the Seventh Circuit, entered on July 16, 1976, which held that Chapter 173 of the 1969 Acts of the Indiana General Assembly and its "companion legislation," Chapters 52 and 239 of the 1969 Acts of the Indiana General Assembly, were "a substantial cause of interdistrict segregation" and a violation of the Equal Protection Clause of the Fourteenth Amendment, and which affirmed the decision and judgment of the United States District Court for the Southern District of Indiana, Indianapolis, Indiana, entered on August 1, 1975.

This appeal is taken pursuant to 28 U. S. C. § 1254(2).

/s/ WILLIAM O. SCHRECKENGAST,
William O. Schreckengast,
Attorney for Added Defendant Appellant The Metropolitan School District of Franklin Township, Marion County, Indiana.

KITLEY, SCHRECKENGAST & DAVIS,
Fourth and Main Streets,
Beech Grove, Indiana 46017,
Of Counsel.

CONSTITUTIONAL PROVISION.

UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT, § 1.

Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL STATUTE.

42 U. S. C. § 1415.

"In order to insure that the low-rent character of housing projects will be preserved, and that the other purposes of this chapter will be achieved, it is provided that—

* * * * *

Local responsibilities and determinations

(7) In recognition that there should be local determination of the need for low-rent housing to meet needs not being adequately met by private enterprise—

* * * * *

(b) The Authority shall not make any contract for loans (other than preliminary loans) or for annual contributions pursuant to this chapter with respect to any low-rent housing project initiated after March 1, 1949, (i) unless the governing body of the locality involved has entered into an agreement with the public housing agency providing for the local cooperation required by the Authority pursuant to this chapter;"

INDIANA STATUTES.

[13]INDIANA ACTS, 1961, CHAPTER 186 (School Annexation Statute) [H. 206. Approved March 8, 1961.]

AN ACT concerning school corporations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. As used in this act, the following terms shall have the following meanings:

(a) "School corporation" shall be any public school corporation of the state located in whole or in part in a county containing a civil city of the first class.

(b) "School city" shall refer to any school corporation which at any time is a school city or school town or has succeeded to jurisdiction of all or the major part in area of a school city or school town.

(c) "Civil city" shall refer to any civil city or civil town, the area of which, or the major portion of the area of which, is under the jurisdiction of a school city.

(d) "Annex," "annexing," "annexation" and "school annexation" shall refer to any action whereby the boundaries of any school corporation are changed so that additional territory, constituting all or a part of any one or more other school corporations, is transferred to it.

(e) "Civil annexation" shall refer to any action whereby the civil boundaries of any civil city are extended.

(f) "Acquiring school corporation" shall be the school corporation which acquires territory as a result of annexation.

(g) "Losing school corporation" shall be any school corporation which loses territory to an acquiring school corporation by annexation.

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13. Codified in its current amended form as IC 20-3-14.

(h) "Annexed territory" shall be the territory acquired by an acquiring school corporation as a result of annexation from a losing school corporation.

(i) "Resolution" of a school township shall refer to a resolution adopted by the trustee and a majority of the advisory board, and of any other school corporation shall refer to a resolution duly adopted by its governing body.

SEC. 2. Subject to the limitations and procedure set out in this act, any school corporation may annex territory from any other school corporation by resolutions of the acquiring and losing school corporations as provided in Section 3, and any school city may annex territory from any other school corporation by its single resolution as provided in Section 4.

SEC. 3. An annexation may be effected by any school corporation as follows:

(a) Both the acquiring and the losing school corporations shall each adopt a substantially identical annexation resolution. This resolution shall contain the following items:

(1) A description of the annexed territory. Such description shall as near as reasonably possible be by streets and other boundaries known by common names and need not be in addition by legal description unless such additional description is necessary to identify the annexed territory. No notice shall be defective if there is a good faith compliance with this section and if the area designated may be ascertained with reasonable certainty by persons skilled in the area of real estate description.

(2) The time the annexation takes place. This may vary with respect to the different parts of the annexed territory; and if the entire annexed territory is contiguous to the acquiring corporation the parts of the annexed territory may be annexed so that some parts may not be contiguous to the annexed territory for temporary periods.

(3) Any terms and conditions facilitating education of pupils in the annexed territory, in the losing school corporation

or in the acquiring school corporation. Such terms may provide for, but shall not be limited to, the continued attendance by children in the annexed territory at schools in the losing school corporation for specified periods of time after annexation on a transfer basis. In such instances transfer tuition for such children shall be paid by the acquiring school corporation to the losing school corporation in the manner and at the rates now or hereafter provided by the statutes of the State of Indiana governing the computation and payment of transfer tuition costs.

(4) Disposition of assets and liabilities of the losing school corporation to the acquiring school corporation; allocation between the acquiring and losing school corporations of subsequently collected school taxes levied on property in the annexed territory; and the amount, if any, to be paid by the acquiring school corporation to the losing school corporation on account of property received from the latter. Such disposition, allocation, and amount shall be equitable.

(b) After the adoption of such resolution, notice shall be given by publication in both the acquiring and the losing school corporations setting out the text of the resolution, together with a statement that such resolution had been adopted and that a right of remonstrance exists as provided herein. It shall not be necessary to set out the remonstrance provisions of the statute, but a general reference to a right of remonstrance with a reference to the act shall be sufficient. The annexation shall take effect within thirty (30) days after such publication, or at the time provided in the resolution, whichever is later, unless within such period a remonstrance (based on a ground other than that set out in Section 6(a)(5) of this act) is filed in the circuit or superior court of the county where the annexed territory or any part thereof is located, by registered voters residing in the losing school corporation at least equal in number to the greater of the following: (a) ten per cent (10%) of the number of registered voters residing in the losing school corporation or (b) fifty-one per cent (51%) of the number of registered voters residing in the annexed territory.

SEC. 4. An annexation may also be effected by any school city as follows:

(a) The acquiring school corporation shall adopt an annexation resolution of the type provided in Section 3. Unless the losing corporation shall consent, such resolution shall not provide a time for annexation prior to the July 1st succeeding the May 1st next succeeding the last publication of the notice of annexation.

(b) After the adoption of such resolution, the acquiring school corporation shall give notice of the type provided in Section 3 by publication in the acquiring school corporation and in the losing school corporation. It shall also give notice to the losing school corporation prior to the last publication of notice therein. Then annexation shall take effect thirty (30) days after the last such publication in the losing school corporation or at the time provided in such resolution whichever is later, unless within such a period of remonstrance (based on a ground other that that set out in Section 6(a)(5) of this act) is filed in the circuit or superior court of the county where the annexed territory or a part thereof is located, by the losing school corporation, by not less than a majority of the owners of land in the annexed territory, or by the owners of seventy-five per cent (75%) or more in assessed valuation of the real estate in the annexed territory.

(c) For purposes of determining such ownership, the following rules shall apply: Only the record title holder or holders of any piece of property shall be an owner. Where record title of any single piece of property is in more than one person, all of them together shall constitute only one owner, and the remonstrance of any one of them shall constitute the remonstrance of all, whether or not authorized by the others.

SEC. 5. (a) The notice by publication required by Sections 3 and 4 shall be made two (2) times a week apart in two (2) daily newspapers of general circulation, published in the English language and of general circulation in the acquiring school

corporation and in the losing school corporation. Where there is only one or no such daily newspaper in either such school corporation, a weekly newspaper or newspapers may be used. Where there is only one such daily and/or weekly newspaper, publication in such paper shall be sufficient. Where any newspaper is of general circulation in both corporations, any publication in such newspaper shall qualify as one of the required publications in each of the school corporations. Publication may be made jointly by the losing and acquiring school corporations. The remonstrance period shall run from the second such publication.

(b) Where notice is to be given by an acquiring to a losing school corporation, it may be made either by registered or certified United States mail, return receipt requested, addressed to the governing board of the losing school corporation at its established business office, or addressed to the township trustee in the case of a school township, or addressed to the superintendent of schools or any officer of the governing body of any other school corporation.

SEC. 6. (a) A remonstrance under either Sections 3 or 4 of this act shall be in the following or a substantially similar form:

The undersigned hereby remonstrate against the annexation of the following described territory situated in ..... County, Indiana, whereby it would be transferred from .... (the losing corporation) to ..... (the acquiring corporation):

(Description of the annexed territory sufficient to identify it.)

The remonstrance may be filed in any number of counterparts. Each counterpart shall have attached to it the affidavit of the person circulating it that each signature appearing thereon was affixed in his presence and is the true and lawful signature of the person who made it. The person who makes such affidavit need not be one of the persons who signs the counterpart to

which it is attached. Such remonstrance shall be accompanied by a complaint filed by one or more of the remonstrators (who shall be treated as a representative of the entire class of remonstrators), and signed by such remonstrator or his attorney, stating the reasons for the remonstrance. Such reasons shall be limited to the following:

(1) There is a procedural defect in the manner in which the annexation is carried out which is jurisdictional.

(2) The annexed territory does not form a compact area abutting the acquiring corporation.

(3) The losing school corporation is left with no high school facilities, or its enrollment after annexation will be less than one thousand (1,000) pupils; provided, however, that such reasons for remonstrance shall not apply in a situation where the annexation includes all of the territory of the losing school corporation.

(4) The benefits to be derived from the annexation are outweighed by its detriments, taking into consideration the respective benefits and detriments to the schools and of the pupils residing in the acquiring school corporation, the losing school corporation, and the annexed territory.

(5) The disposition of assets and liabilities of the losing corporation, the allocation of school tax receipts between the two school corporations and the amount to be paid by the acquiring school corporation as set out in the annexation resolution are inequitable.

Except with respect to item (1), such allegations may be made in the statutory language.

(b) The plaintiff in such suit shall be the person whose name appears on the complaint and may be the losing school corporation in a remonstrance under Section 4. The defendants in a remonstrance under Section 3 shall be both the acquiring and the losing corporations; and in a remonstrance under Section 4 shall be the acquiring school corporation. Service of

process shall be made on the defendants as in other civil actions.

(c) For the purposes of determining whether the petition was timely filed: the time of filing shall be the time of filing with the clerk without regard as to the time of issuance of the summons; where the 30th day falls on Sunday, a holiday or any other day when the clerk's office is not open, the time shall be extended to the next day when such office is open.

(d) The issues in any remonstrance suit shall be made up by the complaint, the allegations thereof being deemed denied by each defendant. No responsive pleading need or may be filed except that any defendant may where appropriate file a motion to dismiss the suit on the ground (1) that the requisite number of qualified remonstrators have not signed the petition, (2) that the remonstrance was not timely filed, or (3) that the complaint does not state a cause of action. No responsive pleading to this motion need or may be filed. With respect to a motion under (1) and (2), the allegations thereof shall be deemed denied by the remonstrators. For purposes of determining whether there are the requisite number of qualified remonstrators, no person shall be entitled to withdraw his name after a remonstrance has been filed nor shall any person be entitled to add his name to such remonstrance. Any person may, however, at the trial of such cause and in support or derogation of the substantive matters in the complaint, introduce into evidence a verified statement that he wishes his name added to or withdrawn from the remonstrance. The court may either hear all or a part of the matters raised by the motion to dismiss separately or may consolidate for trial all or a part of such matters with the matters relating to the substance of the case. No complaint shall be dismissed for failure to state a cause of action, if a fair reading of the complaint makes out one of the grounds for remonstrance and suit provided in subsection (a) above. Amendment of the complaint may be permitted in the discretion of the court if it does not state a new ground for remonstrance.

(e) The trial of a remonstrance suit shall be conducted as other civil cases by the court without the intervention of a jury on the issues raised by the complaint and/or motion to dismiss. A change of venue from a judge, but no change of venue from the county, will be permitted. The court will expedite the hearing of the case. Its judgment, except with respect to any matter raised under subsection (a)(5), shall be either (1) that the annexation shall take place, (2) that the annexation shall not take place, or (3) that the remonstrance shall be dismissed. In the event the court finds that the remonstrators have proved the reasons for the remonstrance described in any one of the first four numbered reasons for remonstrance under subsection (a), its judgment shall be that the annexation shall not take place; unless they have proved one of such four numbered reasons, its judgment shall be that the annexation shall take place. With respect to any matter raised under subsection (a)(5), its judgment may be either that the disposition, allocation and amount set out in the annexing resolution is equitable or that it is inequitable. In the latter event the court in its judgment shall provide for an equitable disposition allocation and amount. Costs shall follow judgment. Appeals may be taken from any judgment of the court in the same manner as appeals are taken in other civil cases.

SEC. 7. With respect to whether the disposition of the assets and liabilities of the losing school corporation, allocation of school tax receipts and the amount to be paid by the acquiring school corporation is equitable, the court shall be satisfied that the annexing resolution conforms substantially to the following standards:

(a) The acquiring school corporation shall assume a portion of all installments of principal and interest on any indebtedness of the losing school corporation (other than current obligations or temporary borrowing) which fall due after the end of the last calendar year in which the losing school corporation is entitled to receive current tax receipts from

property tax levies on the property on the annexed territory. Such portion shall consist of the following: (1) all such installments relating to any indebtedness incurred in connection with the acquisition or construction of any building located in the annexed territory, and (2) a proportion of all such installments relating to any other indebtedness which is the same proportion as the valuation of the real property in the annexed territory bears to the valuation of all the real property in the losing school corporation, as the same is assessed for general taxation immediately prior to annexation.

(b) The acquiring school corporation shall make the payments and assume the obligations provided for a school corporation acquiring territory and/or building or buildings under Chapter 264, Acts 1953.

(c) Unless the losing school corporation shall consent to some other allocation: the portion of the special school and tuition fund monies collected by the losing school corporation shall not be allocated in a greater amount to the acquiring school corporation than would be awarded if such two corporations were respectively the "original school corporation" and the "annexing school corporation" within the meaning of Chapter 112, Acts 1957 as heretofore amended; and the amount to be paid the losing corporation by the acquiring school corporation on account of the acquisition by the acquiring school corporation of a building in the annexed territory shall not be less than would be awarded if such two school corporations were respectively the "acquiring corporation" and "original school corporation" within the meaning of Chapter 89, Acts 1959.

(d) Where the annexed territory includes all of any losing school corporation, the acquiring school corporation shall acquire all of the property and assets of the losing school corporation without making payment of any nature for the same and shall assume all of the liabilities and obligations of the losing school corporation.

SEC. 8. (a) In the event any remonstrance is filed on any ground other than that set forth in Section 6(a)(5), annexation shall not become effective until final judgment in the remonstrance suit. Judgment shall not be considered to be final until the time for taking an appeal has expired, or, if an appeal is taken within such time, until final judgment in the appeal. A judgment of the trial court dismissing a remonstrance shall be considered to be a final judgment, subject to the provisions of the preceding sentence. In the event such judgment is against the annexation, no further annexation of the annexed territory may take place for a period of two (2) years from the date such remonstrance was filed. This shall not, however, prevent either the acquiring or the acquiring and losing school corporations from rescinding the annexation resolution; and in such event the suit shall be dismissed without prejudice. In such latter event such two (2) year prohibition shall not apply unless a subsequent annexation resolution is adopted primarily for the purpose of harassment and not for some other purpose, such as the correction of procedural irregularities or a substantial change in the annexed territory and/or the annexation resolution.

(b) Where the remonstrance relates solely to any matter raised under Section 6(a)(5) the annexation shall take effect at the time provided under Sections 3 or 4.

SEC. 9. (a) Whenever the boundaries of any civil city are extended by a civil annexation which becomes effective as of a date subsequent to the effective date of this act, the boundaries of the school city which has jurisdiction over the area of such civil city or the major portion thereof shall be correspondingly extended by virtue of such civil annexation, subject only to the further provisions of this Section. Every such extension of the boundaries of a school city shall become finally effective on the occurrence of that one of the three following events that is the first to occur:

(i) The expiration of that period of time within which, under the provisions of Section 243, Chapter 129, Acts 1905, as

amended, an appeal from the civil annexation may be filed, if, within such period, no such appeal is taken.

(ii) The expiration of that period of time within which, after the circuit or superior court in which there has been filed an appeal from the civil annexation has decided such appeal adversely to the remonstrator or remonstrators, an appeal from such decision of the circuit or superior court may be taken by the losing party, if, within such period, no such appeal from such decision of the circuit or superior court is taken.

(iii) If an appeal from such decision of the circuit or superior court is taken, the rendition of a final judgment, adverse to the remonstrator or remonstrators, in the appeal. The date as of which, under the foregoing provisions of this Section, a civil annexation becomes finally effective to extend the boundaries of a school city shall also be deemed to be the date of "annexation," the "time of annexation," or the date on which "annexation occurs," whenever the determination of such date or such time shall be required for the application of any of the provisions of Chapter 112, Acts 1957, as amended, or of Chapter 89, Acts 1959, as amended.

(b) Whenever after the effective date of this act the governing body of a civil city shall adopt an ordinance effecting such a civil annexation as is described in Section 9(a) of this act, the losing school corporation shall have the right, notwithstanding any agreement signed by it under Section 7, Chapter 160, Acts 1953, or any similar agreement to remonstrate against, and appeal from, such civil annexation under the provisions of Section 243 of Chapter 129, Acts 1905, as amended. Such right shall be exercised in the same manner as the right to remonstrate and appeal given by said Section to the owners of real estate in the annexed territory. In the event a losing school corporation shall exercise the right of appeal hereby given, but only in such event, the following additional condition shall be a primary determinant of the annexation's merit and shall be the only deter-

minant to be considered by the court with reference to the merit of the remonstrance of the losing school corporation:

The benefits to be derived from the annexation outweigh the detriment, (including but not limited to the benefits and detriments to schools and educational welfare), taking into consideration the respective benefits and detriments to the residents of the civil city, the school city, the losing school corporation, and the annexed territory. If the judge of the court shall find that such primary determinant does not apply to an annexation against which a losing school corporation shall remonstrate, the annexation shall not take place. Nothing in this Section shall be construed to diminish the primary determinants now set out in said Section 243 with reference to remonstrances filed by parties other than the losing school corporation.

(c) Whenever after the effective date of this act the governing body of a civil city shall adopt an ordinance effecting such a civil annexation as is described in Section 9(a) of this act, the school city and the losing school corporation shall have power to agree that none, or only a part, of the territory affected by such civil annexation shall become, by virtue of such civil annexation, a part of the school city. Every such agreement shall be embodied in a substantially identical resolution adopted by the school city and by the losing school corporation, and notice of the adoption of such resolution shall be published within the time fixed by Section 243 of Chapter 129, Acts 1905, as amended, for the taking of an appeal from a civil annexation. Such publication of notice shall be made in the manner provided in Section 5(a) of this act. Whenever such an agreement with respect to a civil annexation shall have been entered into, the losing school corporation shall be deemed thereby to have waived the right, which is given by Section 9(b) of this act, to remonstrate against and appeal from such annexation.

(d)(i) If, on the effective date of this act, the governing body of a civil city shall have adopted an ordinance effecting such a civil annexation as is described in Section 9(a) of this act, which

civil annexation is then subject to, or the subject of, such an appeal as is provided for in said Section 243 of Chapter 129, Acts 1905, as amended, then, in such event, the losing school corporation shall have no right to appeal from such civil annexation, notwithstanding the provisions of Section 9(b) of this act, and the boundaries of the school city shall be deemed to be extended to include the territory involved in such civil annexation, the effective date of such extension to be determined in accordance with Section 9(a) of this act.

(ii) Nothing in this act shall be deemed to affect directly, indirectly, or by implication the question whether any civil annexation that became finally effective prior to the effective date of this act resulted in the extension of the boundaries of any school city.

SEC. 10. All laws or parts of laws in conflict herewith are hereby repealed. This act shall not, however, be construed to repeal any part of Chapter 202, Acts 1959, or any act concerning the consolidation of two or more school corporations, to which this act shall be supplementary, except to the extent that said Chapter 202 conflicts with the subsequent provisions of this section. No annexation that is undertaken pursuant to, or that results by operation of, any Section of this act shall require, for its effectiveness, any approval of any county committee or state commission or committee created pursuant to, or referred to in, said Chapter 202, Acts 1959. The provisions of Section 9 of this act shall operate after the effective date of this act both before and after a final plan has been put into effect by election, petition or other proceeding under the provisions of said Chapter 202 or any other act concerning the consolidation of two or more school corporations.

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[14]INDIANA ACTS, 1969, CHAPTER 52 (School Annexation Statute Amendment).

[S. 153. Approved February 25, 1969.]

AN ACT amending an Act concerning school corporations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. Acts of 1961, c. 186, s. 4 is amended to read as follows: Sec. 4. An annexation may also be effected by any school city as follows:

(a) The acquiring school corporation shall adopt an annexation resolution of the type provided in Section 3. Unless the losing corporation shall consent, such resolution shall not provide a time for annexation prior to the July 1st succeeding the May 1st next succeeding the last publication of the notice of annexation.

(b) After the adoption of such resolution, the acquiring school corporation shall give notice of the type provided in Section 3 by publication in the acquiring school corporation and in the losing school corporation. It shall also give notice to the losing school corporation prior to the last publication of notice therein. The annexation shall take effect thirty (30) days after the last such publication in the losing school corporation or at the time provided in such resolution whichever is later, unless within such a period a remonstrance (based on a ground other than that set out in Section 6(a)(5) of this act) is filed in the circuit or superior court of the county where the annexed territory or a part thereof is located, by the losing school corporation, by not less than a majority of the owners of land in the annexed territory, or by the owners of seventy-five per cent (75%) or more in assessed valuation of the real estate in the annexed territory.

(c) For purposes of determining such ownership, the following rules shall apply: Only the record title holder or holders of any single piece of property shall be an owner.

14. Codified as IC 20-3-14-4.

Where record title of any single piece of property is in more than one person, all of them together shall constitute only one owner, and the remonstrance of any one of them shall constitute the remonstrance of all, whether or not authorized by the others.

SEC. 2. Acts 1961, c. 186, s. 9 is repealed as to all annexations which have not become effective or finally effective prior to the effective date of this act.

[15]SEC. 3. Acts 1961, c. 186 is amended by adding a new and additional section to be numbered Section 9a and to read as follows: Sec. 9a. Notwithstanding any act which provides in substance that the boundaries of any school city or school town are coterminous or coextensive with the boundaries of any civil city or civil town, the boundaries of a school city (as such term is defined in this act) shall be changed after the effective date of this act in 1961 solely by an annexation in accordance with the terms of this act in effect at the time such annexation is effective or finally effective.

[16]SEC. 4. Acts 1961, c. 186, s. 10 is hereby amended to read as follows: Sec. 10. All laws or parts of laws in conflict herewith are hereby repealed. This act shall not, however, be construed to repeal any part of Chapter 202, Acts 1959, or any act concerning the consolidation of two or more school corporations, to which this act shall be supplementary, except to the extent that said Chapter 202 conflicts with the subesquent provisions of this section. No annexation that is undertaken pursuant to, or that results by operation of, any Section of this act shall require, for its effectiveness, any approval of any county committee or state commission or committee created pursuant to, or referred to in, said Chapter 202, Acts 1959. The provisions of Section 9 of this act, with respect to any annexation which is finally effective prior to the effective date of the act amending this section in 1969, shall operate after the effective date of this act both before

15. Codified as IC 20-3-14-9.
16. Codified as IC 20-3-14-10.

and after a final plan has been put into effect by election, petition or other proceeding under the provisions of said Chapter 202 or any other act concerning the consolidation of two or more school corporations.

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[17]INDIANA ACTS, 1969, CHAPTER 173 (Uni-Gov)

[S. 543. Approved March 13, 1969.]

AN ACT concerning reorganization of government in counties containing a city of the first class.

Be it enacted by the General Assembly to the State of Indiana:

Article I —Title Definitions and Applicability of Act.

SECTION 101. Reference to Act. This Act shall be known and may be cited and referred to as the "Consolidated First-Class Cities and Counties Act".

SEC. 102. Definitions. As used in this Act, the following terms shall have the following meanings:

(a) "City of first class" shall be a city of the first class as defined in Acts 1933, c. 233, s. 1.

(b) "County" shall be any county in this State in which there is one but not more than one city of the first class and no city of the second class.

(c) "First Class City" shall be the city of the first class located in a County.

(d) "Excluded City" shall mean any city other than a First Class City in the County and any town in the County having a population in excess of 5,000 inhabitants according to the last preceding United States decennial census.

(e) "Included Town" means any town having a population of less than 5,000 inhabitants according to the last preceding

17. Codified in its current amended form as IC 18-4-1 thru 15.

United States decennial census, all or any part of which is located in the county.

(f) "Consolidated City" shall be a body corporate, created by this Act, and including within its boundaries all of the territory of a First Class City and of the County, except for the territory located in Excluded Cities; Provided, however, That certain departments and special taxing districts of the Consolidated City may have jurisdiction as provided in this Act in territory greater or less than such territorial boundaries. The Consolidated City shall be a city and shall be a city of the first class within the meaning of all laws of the State.

(g) "Mayor" shall be the chief executive officer of the Consolidated City with the powers provided herein.

(h) "City-County Council" shall be the principal legislative body of the Consolidated City and of the County with the powers provided herein.

(i) "Departments" of the Consolidated City and "Divisions" of such Departments are organizational units of the Consolidated City, the chief executive officers of which have the duties and powers assigned or authorized to be assigned under this Act. The chief executive officers of each Department and any Division thereof shall, except where they are otherwise styled in this Act, be known respectively as "Director" and "Administrator".

(j) "Member" shall refer to the member of any council, board or commission set up hereunder; unless otherwise styled the presiding officer thereof shall be the chairman.

(k) A "Special Taxing District" of the Consolidated City shall be a district of less, equal or greater territorial limits than the boundary of the Consolidated City, in which the property owners thereof bind themselves, pursuant to the procedures authorized herein or heretofore authorized by applicable law, for the construction and maintenance of a local public improvement for the use of those who receive the benefit thereof; and projects may include, but shall not be limited to the construction of storm sewers, sanitary sewers, flood control, drainage and

water course improvements, parks, redevelopment projects, thoroughfares, roads and any other project permitted under applicable law for a special taxing district of a city of the first class or the Consolidated City.

(l) A "Special Service District" of or operating in connection with the Consolidated City shall be a district within the Consolidated City or the County formed, created or authorized to be created under this Act for the purpose of providing the property owners therein with a service or services; it shall be administered under the administrative structure of the Consolidated City in accordance with this Act, but shall be a separate body corporate, without, however, the power to issue general obligation bonds.

(m) A "Special Service District Council" shall be comprised of the members of the City-County Council elected from all those districts which encompass any part of a Special Service District.

(n) Where any employee, officer or member of a board or commission serves as "at the pleasure of" or "may be removed by" any appointing or hiring officer, employee or body, such person shall have no relief judicial or otherwise by reason of his termination or removal.

(o) Reference to "law" or "laws" shall mean the applicable statutes, including but not limited to this Act, and any regulations related to such statutes, adopted before or after the effective date of this Act, on any subject, as for example, in the phrases "in accordance with applicable law", "permitted by law" or "authorized by law".

(p) A reference to any statute by the year adopted and the chapter number, as for example, Acts, 1905, c. 129, or to a section of any statute, as for example, Acts 1905, c. 129, s. 53, shall refer to such act or section, any amendments thereto, and any statute or statutes which repeal, supplement or supersede such statute or section, adopted before or after the effective date of this Act.

(q) An "article" of this Act shall refer to the section or group of sections commencing with the same digit or digits, disregarding the last two digits to the right, as for example, sections 101, 201 or 1001, each of which would be in a separate article, or section 101, 102 or 103 which would be in the same article.

(r) "This Act" shall refer to this Act as originally enacted or hereafter amended.

(s) The "effective date of this Act" shall refer to the effective date for the taking effect of its various sections or articles provided in Article XV.

SEC. 103. Applicability. At the time or times provided in Article XV of this Act: a Consolidated City which shall be a municipal body corporate shall be formed in each County (as defined herein); the Consolidated City, its Departments, Special Taxing Districts and Special Service Districts shall have the territorial jurisdictions and the duties and powers provided in this Act and the First Class City shall be merged into the Consolidated City and the First Class City shall be abolished as a separate entity.

SEC. 104. Identification. The Consolidated City shall be known as "City of .....". In such blank shall be inserted the name of the First Class City.

Article II—Powers of the Consolidated City.

SEC. 201. General. The Consolidated City and its Departments, and its Special Taxing Districts and Special Service Districts where powers are delegated to them under this Act, shall have the powers set out in the subsequent sections of this article and otherwise provided in this Act. The Consolidated City and its Special Service Districts shall be municipal corporations with power to sue and be sued.

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Article III—Officers of the Consolidated City and the County.

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SEC. 314. Existing Boards, Agencies and Commissions. At the time all or substantially all of the power and duties of any agency, board or commission of a First Class City are transferred under the terms of this Act to any Departments, Special Taxing Districts or Special Service Districts of the Consolidated City, such agency, board or commission of the First Class City shall be abolished.

At the time the power and duties to perform any function is transferred from any agency, board or commission of the First Class City, the County or any body corporate to the Consolidated City, or any Department, Special Taxing District or Special Service District thereof, the property, records, personnel, contracts and all other rights and liabilities thereof related to such function, including all rights and obligations arising under any pension or retirement plan or fund, shall be similarly transferred except as follows: (1) the City-County Council may by ordinance direct a different repository therefor; (2) general obligation bonds or other indebtedness of the First Class City or indebtedness assumed by the First Class City, other than bonds or indebtedness relating to the function of a Special Service District, shall be binding upon and obligations of the Consolidated City; (3) bonds or indebtedness relating to any function transferred to a Special Service District shall be binding upon and obligations of the Consolidated City; (4) bonds and indebtedness of the Special Taxing District which continues the function of the special taxing district on account of which such bonds and indebtedness were issued. Nothing in this Act shall be construed to impair the obligation of any indebtedness or contract existing on the effective date of this Act.

All proceedings and petitions pending before any board, commission or other agency at the effective date the powers

thereof are transferred under the terms of this Act shall be transferred to the official, board, commission or agency who would have the power to act upon such proceeding or petition under the terms of this Act.

All other municipal corporations, boards, agencies and commissions created by applicable law, or by any ordinance until such ordinance is amended, shall not be affected by this Act, except to the extent that such powers are transferred to the Consolidated City or Department thereof or are otherwise limited under this Act. Without limiting the generality of the following enumeration, such municipal corporations, boards, agencies, authorities and commissions shall include: airport authority and board established pursuant to Acts 1961, c. 293; health and hospital corporation and board established pursuant to Acts 1951, c. 287; county department of welfare and board established pursuant to Acts 1936 (Spec. Sess.), c. 3; county home board established pursuant to Acts 1955, c. 119; building authority, board of trustees and board of directors established pursuant to Acts 1953, c. 54; capital improvements board of managers established pursuant to Acts 1965, c. 326; housing authority established pursuant to Acts 1937, c. 207, except to the extent expressly limited or changed by Article VIII of this Act; library districts and boards thereof established pursuant to Acts 1947, c. 321; and any school corporation, all or a part of the territory of which is in the Consolidated City or County. Where, however, after the effective date of this Act, the power to make an appointment to the governing body or any other board connected with such board, agency or commission, or the power to take any action in connection with the operation of such board, agency or commission, is vested in the County Council of the County or the Common Council of the First Class City, such power shall be vested in the City-County council.

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Article IV—Distribution of Powers.

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Article V—General Procedures

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SEC. 508. Taxation. Any tax to be levied by the Consolidated City for a Department or Division which has territorial jurisdiction coterminous with the boundaries of the County shall be levied on property in the County. Any tax to be levied by the Consolidated City for a Department or Division which has territorial jurisdiction coterminous with its boundaries shall be levied solely on property in the Consolidated City. Any tax to be levied for support of a Special Service District shall be levied on property solely within the Special Service District. Any tax or special tax to finance the operations, improvements or debt service of any Special Taxing District shall be levied solely upon property within the Special Taxing District. Any tax to be levied by the County or Consolidated City for any other functions shall be levied on the property in the jurisdiction affected.

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Article VI—The Departments.

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Article VII—Department of Administration.

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Article VIII—Department of Metropolitan Development.

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Article IX—Department of Public Works.

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SEC. 902. Powers of Department. Except as otherwise provided in this Act, the Department of Public Works shall have all of the authority, powers, rights, duties, liabilities,

obligations and responsibilities now or hereafter granted by law to:

(a) The Department of Public Sanitation and Board of Sanitary Commissioners of the First Class City, including but not limited to Acts 1917, c. 157; Acts 1947, c. 157; Acts 1951, c. 179; Acts 1955, c. 236; Acts 1957, c. 43; Acts 1959, c. 281; and Acts 1967, c. 1. Any existing sanitary district created by any such statutes shall continue as a Special Taxing District of the Consolidated City, with boundaries which are the same as the boundaries of such district on the effective date of this Act. Such boundaries of the Special Taxing District shall not automatically be extended by this Act to the boundaries of the Consolidated City, but additional territory shall be incorporated into such District in the manner prescribed by Acts 1917, c. 157, with the Board of Public Works exercising the power of incorporation of territory of the board of sanitary commissioners under such statute, with the additional requirement that any such incorporation shall be approved by resolution of the City-County Council.

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Article X—Department of Transportation.

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Article XI—Public Health.

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Article XII—Department of Public Safety.

SEC. 1206. Definitions. As used in Sections 1206 through 1233 of this Article, the following words and phrases shall have the following meanings:

(a) "Consolidated City Police Force" or "Force" shall mean the Police Division of the Department created under this Act.

(b) "Police Special Service District" shall mean a Special Service District in which the Consolidated City Police Force created under this Article shall have jurisdiction. At the effective date of this Act such Police Special Service District shall be coterminous with the boundaries of the First Class City as the same existed on the day preceding the effective date of this Act, but may be expanded by the City-County Council in accordance with this Article. At the time that the boundaries of such Police Special Service District become coterminous with the boundaries of the Consolidated City, the Police Special Service District may be dissolved by the Director and such District shall be a Department of the Consolidated City.

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SEC. 1234. Definitions. As used in Section 1234 through 1243 of this Article, the following words and phrases shall have the following meanings:

(a) "Consolidated City Fire Force" or "Force" shall mean the Fire Division of the Department created under this Article.

(b) "Fire Special Service District" shall mean a Special Service District in which the Consolidated City Fire Force created under this Article shall have jurisdiction. At the effective date of this Article, such Fire Special Service District shall be coterminous with the boundaries of the First Class City as the same shall have existed on the day preceding the effective date of this Act, but may be expanded by the City-County Council in accordance with this Article. At the time that the boundaries of such Fire Special Service District become coterminous with the boundaries of the Consolidated City, the Fire Special Service District may be dissolved by the Director and such department shall be a Department of the Consolidated City.

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Article XIII—Department of Parks and Recreation.

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Article XIV—Finances.

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Article XV—General Provisions.

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[18]INDIANA ACTS, 1969, CHAPTER 239 (Civil Annexation Statute) [H. 1006. Approved March 14, 1969.]

AN ACT relating to cities and towns; their common powers; annexation of territory; additions, plats, and repealing certain laws.

Be it enacted by the General Assembly of the State of Indiana:

ARTICLE 1. Definitions and Citation Reference.

SECTION 101. This act may be cited and referred to as the City and Town Act of 1969.

* * * * *

Article III. Union of Cities and Towns.

SEC. 301. Where a city and a town, or two (2) cities, or two (2) towns, adjoin each other, they may be united provided a majority of the qualified voters voting on the question of union, in each of the adjoining corporations shall vote in favor of the union. The common council of the city and the board of trustees of the town, or the common councils of the cities, or the boards of trustees of the towns, as the case may be, shall, by resolution, passed by each council or board, first agree on the terms upon which the union shall take place, including the name by which the united corporation shall be known, and the day upon which an election for the purpose shall be held in each of the adjoining municipalities.

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18. Codified in its current amended form as IC 18-5-10.

Notice of the agreement shall be given at least twenty (20) days before the time fixed for the election, by publication of the same for two (2) weeks successively, once each week, in each of the corporations as the publication requirements of Chapter 96, Acts of 1927, as amended, applies to each of them.

The elections shall be held in the voting precincts of each of the corporations, as other city and town elections are held. The ballots for the election shall have thereon the words "Yes" and "No," and those electors favoring the agreement shall vote "Yes" and those opposed, "No"; and the election boards shall report to their respective common councils or boards of trustees the result of the election. A certified copy of the result of the election in each corporation shall be filed with the common council or board of trustees of the other corporation; and if a majority of the electors voting on the question in each of the corporations votes in favor of the union, then the two (2) corporations shall be united in accordance with the terms of the agreement theretofore entered into. A duly certified copy of the agreement, and of the result of the election, shall be filed in the office of the recorder of the county or counties in which the united corporation is situated, signed by the mayor or presiding officer and attested by the clerk, and sealed with the seal of each of the constitutent corporations. Copies of the record shall be received in all courts and places as conclusive of the union of the corporation under the name so agreed upon.

* * * * *

Article IV. Annexation.

SEC. 401. The common council may, by ordinance, declare and define the entire corporate boundaries of the city, and the ordinances, properly certified, shall be conclusive evidence, in any court or proceeding, of the boundaries of the city. The ordinances defining the entire city boundary may include con-

tiguous territory, whether platted or not, not previously annexed, and may include such terms and conditions, as hereinafter defined, as may be deemed just and reasonable by the common council, and the annexation ordinances shall become final and binding sixty (60) days after final publication thereof as required in section 402 of this article in the absence of remonstrance and appeal as provided in section 406 of this article.

SEC. 402. The common council may also, by separate ordinance not purporting to define the entire boundaries of the city, annex contiguous territory, whether platted or not, to the city, and may include such terms and conditions, as hereinafter defined, as may be deemed just and reasonable by the common council, and a certified copy of the ordinances shall be conclusive evidence in any proceeding that the territory therein described was properly annexed and constitutes a part of the city. The annexation ordinances shall become final and binding sixty (60) days after final publication thereof in the absence of remonstrance and appeal as provided in section 406 of this article. Immediately after the passage of every such ordinance the same shall be published once each week for at least two (2) consecutive weeks in accordance with Chapter 96, Acts of 1927, as amended.

SEC. 403. The terms and conditions applicable to the annexation may relate to any matter reasonably and fairly calculated to render the annexation just and equitable both to the city, its property owners and inhabitants, and to the annexed territory, its property owners and inhabitants, including, but not restricted to, such matters as: (a) postponing the effective date of such annexation; (b) impounding in a special fund in whole or in part the municipal property taxes to be imposed upon the annexed territory after annexation shall take effect, in such amount and for such period of time, not to exceed three (3) years, as the common council may determine, and using the impounded taxes solely for the benefit of the annexed territory, its property owners and inhabitants, in the extension

of municipal services and benefits and the making of municipal or public improvements in the annexed territory; or (c) establishing equitable provisions for the future management and improvement of the annexed territory and for the rendering of needed services.

SEC. 404. The mayor and the proper administrative board with the ratification and approval of the common council shall also have the power, in lieu of annexing contiguous territory or in cases not involving any proposed annexation of territory, to enter into contracts with the owners or lessees of designated property in the vicinity of the city, whether within or without the county in which the city is located, providing for the payment or contribution of money to the city to be used for such municipal or public purposes as may be specified in the contract, whether the payments are related to or in consideration of municipal services or benefits already received, or to be received under the contract or otherwise, by the property owners or lessees, or whether the payments are in lieu of taxes that might be levied upon annexation of the designated property, or whether the payments are wholly unrelated to municipal services or benefits to or potential tax impositions upon the designated property.

The contracts may be entered into for such period of time, not exceeding fifteen (15) continuous years under any one (1) contract, with first and second class cities, and not exceeding four (4) continuous years under any one (1) contract with third, fourth and fifth class cities, as the city and the property owners or lessees shall agree upon. Unless the control is induced by the fraud of the property owners or lessees or is grossly and corruptly improvident on the part of the city, the same shall continue in force for the full term of the contract, or until the contract is terminated or reduced in duration by mutual agreement of both the city and the property owners or lessees, and, if the contract provides, during the effective term of any such contract the designated property of the

contracting owners or lessees all not be subject to annexation by the contracting city.

Any other municipal authority having taxing power in respect to the designated property or entitled to share in the property taxes assessed and collected by the city may join in any such contract, or enter into a separate contract with the city, providing for the division and distribution of the payments to be made under the contract and for the receipt of a share thereof by such other municipal authority.

SEC. 405. Whenever the owners of real estate situated outside the corporate boundaries of any city, but adjacent thereto, desire to have real estate annexed to the city, they may file with the common council of the city a petition bearing the signatures of fifty-one percent (51%) of the owners of land in the territory sought to be annexed, requesting a special ordinance for the purpose of annexing the contiguous territory described in the petition. If the common council fails to pass the special ordinance within sixty (60) days from the date of the filing of the petition, the petitioners may file a duplicate copy of the petition in the circuit or superior courts of the county where the territory is situated or with the judge thereof in vacation and the petition shall state the reason why the annexation should, in justice, take place. Notice of the proceedings, by way of summons, shall be served upon proper officers of the city to which the petition has been presented and the city shall become defendant in the cause and shall be required to appear and answer as in other cases. The court or judge thereof in vacation shall thereupon proceed to hear and shall give judgment upon the question of annexation according to the evidence which either party may introduce. If the evidence establishes that:

(a) Essential municipal services and facilities are not available to the inhabitants of such territory; and

(b) The city is physically and financially able to provide municipal services to the area sought to be annexed; and

(c) The total resident population of the area sought to be annexed is equal to at least three (3) persons for each acre of land included within its boundaries; and

(d) At least one-eighth of aggregate external boundaries of the territory sought to be annexed coincide with the boundaries of the annexing city; the court shall order the proposed annexation to take place, notwithstanding the provisions of any other law of this state.

If, however, the evidence does not establish all four (4) of the foregoing factors, the court shall deny the petition to annex and dismiss the proceeding.

SEC. 406 Whenever territory is annexed to a city, whether by general ordinance defining the city boundaries or by special ordinance for the purpose of annexing territory, an appeal may be taken from the annexation by either a majority of the owners of land in the territory or by the owners of more than seventy-five percent (75%) in assessed valuation of the real estate in the territory, if they deem themselves aggrieved or injuriously affected, by filing their remonstrances in writing against the annexation, together with a copy of the ordinance, in the circuit or superior courts of the county where the territory is situated or with the judge thereof in vacation within sixty (60) days after the last publication provided for in section 402 of this article. The written remonstrance or complaint shall state the reason why annexation should not in justice take place.

Upon receipt of the remonstrance, the court or the judge thereof in vacation shall determine whether it bears the necessary signatures and complies with the requirements of sections 406 through 408 of this article. In determining the total number of landowners of the area and whether or not signers of the remonstrance are landowners, the names as they appear upon the tax duplicate shall be prima facie evidence of ownership. In ascertaining the number of landowners of the area and for the purpose of determining the sufficiency of the remonstrance as to the number of landowners required to constitute a majority,

not more than one (1) person having an interest in a single property, as evidenced by the tax duplicate, shall be considered a landowner.

Upon the determination of the judge of the court that the remonstrance is sufficient he shall fix a time for a hearing on the remonstrance which shall be held not later than sixty (60) days thereafter. Notice of the proceedings by way of summons shall be served upon the proper officers of the city seeking to make annexation, and the city shall become defendant in such cause, and shall be required to appear and answer as in other cases.

SEC. 407. The judge of the circuit or superior court shall, upon the date fixed, proceed to hear and determine the appeal without the intervention of jury, and shall, without delay, give judgment upon the question of the annexation according to the evidence which either party may introduce. If the evidence establishes that:

(a) The resident population of the area sought to be annexed is equal to at least three (3) persons for each acre of land included within its boundaries or that the land is zoned for commercial, business or industrial uses or that sixty percent (60%) of the land therein is subdivided; and

(b) At least one-eighth of the aggregate external boundaries of the territory sought to be annexed coincide with the boundaries of the annexing city; and

(c) The annexing city has developed a fiscal plan and has established a definite policy to furnish the territory to be annexed within a period of three (3) years, governmental and proprietary services substantially equivalent in standard and scope to the governmental and proprietary services furnished by the annexing city to other areas of the city which have characteristics of topography, patterns of land utilization and population density similar to the territory to be annexed; the court shall order the proposed annexation to take place notwithstanding the provisions of any other law of this state.

If however, the evidence does not establish all three (3) of the foregoing factors the court shall sustain the remonstrance and deny the annexation unless the area although not meeting the conditions of factor (a) supra is bordered on one-fourth of its aggregate external boundaries by the boundaries of the city and is needed and can be used by the city for its future development in the reasonably near future, the court may order the proposed annexation to take place notwithstanding the provisions of any other law of this state. The laws providing for change of venue from the county shall not apply, but changes of venue from the judge may be had as in other cases. Costs shall follow judgment. Pending the appeal, and during the time within which the appeal may be taken, the territory sought to be annexed shall not be deemed a part of the annexing city.

SEC. 408. Upon the determination of the appeal, the judgment shall particularly describe the ordinance upon which the appeal is based, and the clerk of the circuit court shall forthwith deliver a certified copy of the judgment to the clerk or clerk-treasurer of the city, who shall record the same in the ordinance record and make a cross reference to the page thereof upon the margin where the original ordinance was recorded. In case the decision is adverse to annexation, no further annexation proceedings for the territory shall be lawful for two (2) years after the rendition of the judgment, unless the annexation is petitioned in conformance with provisions of section 405 of this article.

SEC. 409. Annexation of a city or town regardless of population shall not be made under any of the provisions of this article, but shall only take place in accordance with the provisions of Article III, Union of Cities and Towns, section 301.

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INDIANA ACTS 1905, CHAPTER 129, as amended by INDIANA ACTS 1955, CHAPTER 269 (Pre-1969 Civil Annexation Statute).

[S. 75. Approved March 6, 1905.]

AN ACT concerning municipal corporations.

SEC. 241. Where a city and a town, or two cities, or two towns, adjoin each other, they may be united provided a majority of the qualified voters voting on such question of union, in each of such adjoining corporations, shall vote in favor of such union. The common council of such city and the board of trustees of such town, or the common councils of such cities, or the boards of trustees of such towns, as the case may be, shall, by a resolution, passed by each council or board, first agree on the terms upon which such union shall take place, including the name by which the united corporation shall be known and the day upon which an election for the purpose shall be held in each of the adjoining municipalities. Notice of such agreement shall be given at least twenty days before the time fixed for such election, by publication of the same for two weeks successively, once each week, in each newspaper published in each of such corporations, and by posting printed copies thereof in one or more public places in each ward of each of such corporations. Such election shall be held in the voting precincts of each of such corporations, as other city and town elections are held. The ballots for such election shall have thereon the words "Yes" and "No," and those electors favoring such agreement shall vote "Yes," and those opposed, "No;" and the election boards shall report to their respective common councils or boards of trustees the result of such election. A certified copy of the result of the election in each corporation shall be filed with the common council or board of trustees of the other corporation; and if a majority of the electors, voting on such question in each of such corporations, vote in favor of such union, then the two corporations shall be united in accordance with the terms of the agreement

theretofore entered into; and a duly certified copy of such agreement, and of the result of such election, shall be filed in the office of the recorder of the county or counties in which such united corporation is situated, signed by the mayor or presiding officer and attested by the clerk and sealed with the seal of each of such constituent corporations; and copies of such record shall be received in all courts and places as conclusive of such union of such corporations under the name so agreed upon. In case of such union, the new corporation shall be liable for all the debts, contracts and liabilities of the constituent corporations, and shall be entitled to all the rights, credits, moneys, effects and properties theretofore had, held or owned by them or either of them, and may sue and be sued in relation to such debts, contracts, liabilities, rights, credits and properties by the name adopted on such union. But all actions pending at the time of such union shall be prosecuted to final judgment and execution, and all judgments theretofore rendered may be executed and enforced against the new corporation, without any change of the name of the plaintiff or defendant.

SEC. 242. The common council shall have power, by ordinance, to declare and define the entire corporate boundaries of such city, and such ordinances, properly certified, shall be conclusive evidence, in any court or proceeding, of the boundaries of such city, except as provided in the next section. Such ordinances defining the entire city boundary may include contiguous territory, whether platted or not, not previously annexed, and may include such terms and conditions, as hereinafter defined, as may be deemed just and reasonable by said common council, and such annexation shall be binding, unless such newly annexed territory shall be within the limits of another town or city, in which case there may be an appeal, as hereinafter provided. Said common council may also, by separate ordinance, not purporting to define the entire boundaries of such city annex contiguous territory, whether platted or not, to such city, and may include such terms and conditions, as here-

inafter defined, as may be deemed just and reasonable by said common council, and a certified copy of such ordinances shall be conclusive evidence in any proceeding that the territory therein described was properly annexed and constitutes a part of such city, except as provided in the following sections. Immediately after the passage of every such ordinance as provided for in this section, the same shall be published for at least two (2) consecutive weeks in a daily newspaper of general circulation published in such city.

The terms and conditions applicable to any such annexation may relate to any matter reasonably and fairly calculated to render such annexation just and equitable both to the city, its property owners and inhabitants, and to the annexed territory, its property owners and inhabitants, including, but not restricted to, such matters as (a) postponing the effective date of such annexation, (b) impounding in a special fund in whole or in part the municipal property taxes to be imposed upon the annexed territory after annexation shall take effect, in such amount and for such period of time, not to exceed three (3) years, as said common council may determine, and using such impounded taxes solely for the benefit of such annexed territory, its property owners and inhabitants, in the extension of municipal services and benefits and the making of municipal or public improvements in the annexed territory, or (c) establishing equitable provisions for the future management and improvement of the annexed territory and for the rendering of needed services.

The mayor and the proper administrative board with the ratification and approval of the common council shall also have the power, in lieu of annexing any such contiguous territory or in cases not involving any proposed annexation of territory, to enter into contracts with the owners or lessees of designated property in the vicinity of the city, whether within or without the county in which the city is located, providing for the payment or contribution of money to the city to be used for

such municipal or public purposes as may be specified in such contract, whether such payments are related to or in consideration of municipal services or benefits already received, or to be received under such contract or otherwise, by such property owners or lessees, or whether such payments are in lieu of taxes that might be levied upon annexation of such designated property, or whether such payments are wholly unrelated to municipal services or benefits to or potential tax impositions upon such designated property. Such contracts may be entered into for such period of time, not exceeding fifteen (15) continuous years under any one such contract, with first and second class cities, and not exceeding four (4) continuous years under any one such contract with third, fourth and fifth class cities, as the city and such property owners or lessees shall agree upon. Unless any such contract shall have been induced by the fraud of said property owners or lessees or shall be grossly and corruptly improvident on the part of the city, the same shall continue in force for the full term of such contract, or until such contract is terminated or reduced in duration by mutual agreement of both the city and such property owners or lessees, and, if the contract so provides, during the effective term of any such contract the designated property of such contracting owners or lessees shall not be subject to annexation by the contracting city. Any other municipal authority having taxing power in respect to such designated property or entitled to share in the property taxes assessed and collected by the city is hereby empowered to join in any such contract, or to enter into a separate contract with the city, providing for the division and distribution of the payments to be made under such contract and for the receipt of a share thereof by such other municipal authority (as amended by Acts 1955, ch. 269, § 1).

SEC. 242a. Whenever the owners of real estate situated outside the corporate boundaries of any city, but adjacent thereto, shall desire to have real estate annexed to such city, they may file with the common council of such city a petition bearing the signatures of fifty-one (51) percent of the owners of

land in the territory sought to be annexed, requesting a special ordinance for the purpose of annexing the contiguous territory described in the petition. If the common council fails to pass such special ordinance within sixty days from the date of the filing of the petition, the petitioners may file a duplicate copy of the petition in the circuit or superior courts of the county where such territory is situated or with the judge thereof in vacation and the petition shall state the reason why such annexation should, in justice, take place. Notice of such proceedings, by way of summons, shall be served upon the proper officers of the city to which the petition has been presented and such city shall become defendant in such cause and shall be required to appear and answer as in other cases. The court or judge thereof in vacation shall thereupon proceed to hear and determine such petition without the intervention of a jury and shall give judgment upon the question of such annexation according to the evidence which either party may introduce. Such evidence demonstrating the presence of the following conditions shall be considered the primary determinants of the annexation's merit:

(a) The annexation is in the best interests of the city and of the territory sought to be annexed.

(b) The area is urban in character, being an economic and social part of the annexing city.

(c) The terms and conditions set forth in the ordinance are fair and just.

(d) The city is financially able to provide municipal services to the annexed area within the reasonably near future.

(e) The area sought to be annexed, if undeveloped, is needed for development of the city in the reasonably near future.

(f) The lines of the annexation are so drawn as to form a compact area abutting the municipality.

If the court shall find that the primary determinants enumerated above apply to the annexation, it shall so take place not-

withstanding the provisions of any other statute of this state. If however, the presence of the primary determinants prescribed in this section cannot be demonstrated in the evidence, the annexation shall not take place. (as amended by Acts 1955, ch. 269, § 2).

SEC. 243. Whenever territory is annexed to a city whether by general ordinance defining the city boundaries, or by special ordinance for the purpose of annexing territory, an appeal may be taken from such annexation by either a majority of the owners of land in the territory or by the owners of more than seventy-five (75) per cent in assessed valuation of the real estate in the territory, if they deem themselves aggrieved or injuriously affected, by filing their remonstrances in writing against such annexation, together with a copy of such ordinance, in the circuit or superior courts of the county where such territory is situated or with the judge thereof in vacation, within thirty days after the last publication provided for in Section 242; such written remonstrance or complaint shall state the reason why such annexation ought not in justice take place. Upon receipt of such remonstrance the court or the judge thereof in vacation shall determine whether it bears the necessary signatures and complies with the requirements of this section. In determining the total number of land owners of the area and whether or not signers of the remonstrance are land owners, the names as they appear upon the tax duplicate shall be prima facie evidence of such ownership. In ascertaining the number of land owners of the area and for the purpose of determining the sufficiency of the remonstrance as to the number of land owners required to constitute a majority, not more than one person having an interest in a single property, as evidenced by the tax duplicate, shall be considered a land owner. Upon the determination of the judge of the court that the remonstrance is sufficient he shall fix a time for a hearing on the remonstrance which shall be held not later than sixty days thereafter. Notice of such proceedings by way of summons shall be served upon the proper officers of the city seeking to make annexation, and such city shall become defendant in

such cause, and shall be required to appear and answer as in other cases. The judge of the court shall, upon the date fixed, proceed to hear and determine such appeal without the intervention of jury, and shall, without delay, give judgment upon the question of such annexation according to the evidence which either party may introduce. Such evidence demonstrating the presence of the following conditions shall be considered the primary determinants of the annexation's merit:

(a) The annexation is in the best interests of the city and of the territory sought to be annexed.

(b) The area is urban in character, being an economic and social part of the annexing city.

(c) The terms and conditions set forth in the ordinance are fair and just.

(d) The city is financially able to provide municipal services to the annexed area within the reasonably near future.

(e) The area sought to be annexed, if undeveloped, is needed for development of the city in the reasonably near future.

(f) The lines of the annexation are so drawn as to form a compact area abutting the municipality.

If the judge of the court shall find that the primary determinants enumerated above apply to the annexation, it shall take place notwithstanding the remonstrance and notwithstanding, further, the provisions of any other statute of this state. If, however, the presence of these primary determinants cannot be demonstrated in the evidence, the annexation shall not take place. The laws touching change of venue from the county shall not apply, but changes of venue from the judge may be had as in other cases. Costs shall follow judgment. Pending such appeal, and during the time within which such appeal may be taken, such territory sought to be annexed shall not be deemed a part of the annexing city. Upon the determination of such appeal, the judgment shall particularly describe the ordinance upon which the appeal is based, and it shall be the duty of the county clerk

to forthwith deliver a certified copy of such judgment to the clerk of such city, who shall record the same in the ordinance record, and make a cross reference to the page thereof upon the margin where such original ordinance was recorded. In case the decision is adverse to such annexation, no further annexation proceedings for such territory shall be lawful for two years after the rendition of such judgment, unless such annexation is petitioned in conformance with provisions of Section 242a, hereof: Provided, That in case any incorporated town or city shall be located within the corporate limits of such other city and not annexed as contemplated in this act, such incorporated town or city so located as aforesaid, shall not be entitled to have or receive from such incorporated city within which it is located, any fire or police protection, until such minor town or city shall first have entered into a contract or agreement with the city within which it is located, binding such minor corporation to pay a reasonable compensation to be agreed upon mutually by such corporate authorities. The same regulation shall apply to sweeping, cleaning and sprinkling service, and to sewer privileges: Provided, That if the corporate authorities of such municipalities can not mutually agree as to the compensation to be paid for such services and privileges by such minor town or city, either of such municipalities may by petition present the matter to the judge of the circuit court of the county in which such municipalities are located, who shall cause such other town or city to be notified of such petition, and require the same to answer thereto, and shall have jurisdiction on such applications to hear and determine such matter and determine and fix such reasonable compensation, and his adjudication shall be final. The cost of such proceedings shall be paid by the municipality making such application. (As amended Acts 1955, ch. 269, § 3.)

SEC. 244. No such annexation shall be made, under the foregoing sections of a part of the territory of any other incorporated town or city, but only of the whole corporate territory thereof. In case of such annexation, the two corporations shall be deemed to be consolidated, and the consolidated cor-

poration shall be bound for all the debts and liabilities, and shall be the owner of all corporate property, franchises and rights of every nature, of both of such municipal corporations: Provided, however, That no incorporated city or town regardless of population shall be annexed under any of the provisions of sections 242, 242a and 243 of this act but shall only take place in accordance with the provisions of section 241 of this act. (As amended Acts 1955, ch. 269, § 4.)

[19]INDIANA ACTS, 1959, CHAPTER 202, as amended by INDIANA ACTS, 1961, Chapters 231 and 302 (The School Corporation Reorganization Act)

[S. 6 Approved March 12, 1959.]

AN ACT to declare the policy of the state with regard to the reorganization of school corporations in order to establish and maintain a more uniform and thorough system of public schools; to prescribe the procedure by which reorganization of school corporations may be achieved; to provide for a State Reorganization Commission and for a County Reorganization Committee in each county in the state; to describe the powers and duties of such commission and committees; to set forth the responsibilities of existing state, county, and school corporation officers with respect to reorganization of school corporations; to guarantee to the electors of each school corporation the opportunity of participation in proposed reorganization plans; to provide for appeals from decisions of officers entrusted with authority under the provisions of this act; to define the administration of reorganized school corporations; to provide appropriations for carrying out the provisions of this act; and to supplement existing laws with the provisions of this act.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. It is the sense of the Indiana General Assembly now assembled: That the establishment and maintenance of a

19. Codified in its current amended form as IC 20-4-1.

general, uniform and efficient system of public schools is the traditional and current policy of the State of Indiana; that improvement in the organization of school corporations of the state will provide a more equalized educational opportunity for public school pupils, will achieve greater equity in school tax rates among the inhabitants of the various now existing school corporations, and will provide a more effective use of the public funds, expended for the support of the public school system; that existing statutes with respect to the combination and the reorganization of school corporations are inadequate to effectuate the needed improvement; that modifications in the statutory provisions for the combination and the reorganization of school corporations provided in this act are necessary in order to assure the future maintenance of a uniform and efficient system of public schools in the state; that local electors have an interest in the boundaries of the school corporation in which they reside and will exercise their privileges, as herein provided, to the end of establishing an efficient and economical reorganization plan best suited to local conditions; that the commission, committees, and the public officers charged with authority under this act will perform their duties wisely in view of the objective of this act as set forth in the title of this act.

SEC. 2. This act shall be known and may be cited as "The School Corporation Reorganization Act of 1959."

SEC. 3. As used in this act, unless context clearly requires otherwise, the following terms shall have the meanings here set forth:

(1) "School corporation" shall mean and include all local school corporations in the State of Indiana.

(2) "Reorganization of school corporations" shall mean and include the formation of new school corporations, the alteration of the boundaries of established school corporations, and the dissolution of established school corporations, through or by means of (a) the uniting of two or more established school corporations; (b) the subdivision of one or more school corpo-

rations; (c) the transfer to any established school corporation of a part of the territory of one or more school corporations, and/or the attachment thereto of all or any part of the territory of one or more school corporations, and/or the transfer of said established school corporation; and (d) any combination of the methods aforementioned.

(3) The term "community school corporation" shall mean a school corporation proposed to be formed or formed under the provisions of this act and shall include a united school corporation as hereinafter defined.

(4) A "united school corporation" shall mean a school corporation having territory in two or more adjacent counties.

(5) An "administrative unit" shall mean a school corporation comprising all the area under a single system of local administration and under the control of a local board of education, board of school trustees or board of school commissioners.

(6) An "attendance unit" or "school unit" shall mean the geographical and population area served by a single school, consisting of part, or all, of an administrative unit.

(7) "County Committee" or "Committee" shall mean the County Committee for the Reorganization of School Corporations, provided for in section 5 hereof.

(8) "State Commission" or "Commission" shall mean the State Commission for the Reorganization of School Corporations, provided for in section 6 hereof.

(9) "State Department" shall mean the State Department of Public Instruction.

(10) "State Superintendent" shall mean the State Superintendent of Public Instruction.

(11) "County superintendent" shall mean the county superintendent of schools.

(12) "Party" includes any persons, firm, corporation, association, or municipality interested in any proceedings under the provisions of this act.

SEC. 5. (1) Within three (3) months after the approval of this act, there shall be created in each county in the state a county committee for the reorganization of school corporations, which shall consist of the county superintendent of schools and eight (8) members appointed by the judge of the circuit court of the county.

* * * * *

(2) Within one (1) year after the date of the county convention, the county committee shall complete the preparation of a preliminary written plan for the reorganization of school corporations within the county.

Such plan shall provide for the incorporation of all areas of the county into one or more administrative units that can provide an adequate educational program for grades one (1) through twelve (12).

* * * * *

The county committee shall have the power and it shall be its duty to determine, as to each of the community school corporations which are a part of the reorganization plan:

(a) The name of the community school corporation;

(b) The boundaries of the community school corporation;

(c) The number of members on the board of school trustees, the designation of the officers of such board of school trustees, whether the board of school trustees shall be elected at the primary or at the general election, and, subject to the provisions of subdivisions (3) and (4) of section 9 of this act, the manner in which such board of school trustees shall be elected or appointed: Provided, however, That the total number of school trustees shall not be less than three (3) nor more than seven (7).

(d) Whether the community school corporation and board of school trustees shall have the rights, powers, duties and liabilities vested in boards of school trustees of cities of the fifth class or the rights, powers, duties and liabilities vested in the

board of school trustees of the school corporation which has the largest enrollment and which will be a part of the community school corporation, under the laws of the State of Indiana;

(e) Limitations on residence, term of office and other qualifications required of the members of such board of school trustees: Provided, however, That no plan shall provide for an appointive or elective term of more than four (4) years, but any member may succeed himself in office.

(5) When any county committee has prepared its preliminary written plans, maps, and charts for reorganization of school corporations, it shall fix dates and places for hearings thereon and give notice thereof to all the residents of the school corporations affected and all interested parties. Such notice shall be given by the chairman of the county committee by publication at least once in one (1) newspaper of general circulation published in the school corporation or corporations, and if no newspaper is published in the school corporation or corporations, then in a newspaper having a general circulation within the school corporation or corporations, at least ten (10) days but not more than thirty (30) days prior to the date set for such hearing.

* * * * *

(6) The committee shall consider any suggestions made in the public hearing, and shall make any revisions or modifications in its written plans as it deems necessary and shall thereupon adopt its final comprehensive reorganization plan, and, within ten (10) days after such adoption, but not later than eighteen (18) months after the creation of the county committee, shall submit at least two copies of its comprehensive plan to the State Commission: . . .

* * * * *

(8) The comprehensive plan shall show as to each of the community school corporations covered thereby:

(a) The name of the community school corporation;

(b) The boundaries of the community school corporation;

(c) The number of members on the board of school trustees, the designation of the officers of such board of school trustees, whether the board of school trustees shall be elected or appointed and if elected whether they shall be elected at the primary or at the general election, and, subject to the provisions of subdivisions (3) and (4) of section 9 of this act, the manner in which such board of school trustees shall be elected or appointed: Provided, however, That the total number of school trustees shall not be less than three (3) nor more than seven (7);

(d) Whether the community school corporation and board of school trustees shall have the rights, powers, duties and liabilities vested in boards of school trustees of cities of the fifth class or those rights, powers, duties and liabilities vested in the board of school trustees of the school corporation which has the largest enrollment and which will be a part of the community school corporation, under the laws of the State of Indiana;

(e) Limitations on residence, term of office and other qualifications required of the members of such board of school trustees: Provided, however, That no plan shall provide for an appointive or elective term of more than four (4) years, but any member may succeed himself in office;

(f) The disposition of the assets and liabilities of each existing school corporation.

* * * * *

(9) All superintendents of local school corporations and the county superintendent shall comprise an advisory committee to the county committee. Such advisory committee shall render such help to the county committee as may be requested by the county committees from time to time (as amended by Acts 1961, ch. 231, § 1).

SEC. 6. (1) Within thirty (30) days after the approval of this act, the State Commission for the Reorganization of

School Corporations shall be created. The Commission shall consist of the State Superintendent of Public Instruction, the Attorney General and seven (7) members appointed by the Governor of the State of Indiana, one (1) of whom shall be a member of the State Tax Board, and one (1) of whom shall be a member of the State Board of Accounts. The other five (5) appointed members shall be residents of the State of Indiana who are well informed concerning the problems of the public schools of the state and who shall be representative of the various sections and interests of the state, but shall not be officers or employees of the State of Indiana or any of its political subdivisions or of any local board of school trustees, board of school commissioners or county board of education. The governor shall appoint such appointive members of the Commission without regard to political affiliation and designate one of the members so appointed as chairman. At its first meeting the State Commission shall elect a secretary from among its members.

* * * * *

(3) The State Commission shall have the following powers and duties:

* * * * *

(c) The State Commission shall receive and examine each plan for the reorganization of school corporations submitted to it by the County Committees, and approve such plan when it is found by the State Commission to provide for a satisfactory school organization.

(d) The State Commission shall formulate and adopt a set of minimum standards which all proposed reorganized school corporations must meet, in so far as possible. Such minimum standards shall include, but shall not necessarily be limited to, the following:

(1) All county plans shall provide for the inclusion of all the area of the county in a school corporation or school corporations, in order to furnish efficient and adequate educa-

tional opportunity for all the pupils in grades one (1) through twelve (12).

(2) Each community school corporation shall be as nearly as practicable a natural social and economic community, but may include all the territory of a county, or all of the territory of a county and territory from contiguous counties.

(e) The State Commission shall, within sixty (60) days after receipt of a reorganizational plan, hold a public hearing in the county to which such reorganizational plan mainly appertains at which residents of the county or of any school corporation affected in an adjacent county or any other interested party shall be afforded an opportunity to appear before the State Commission and be heard with reference to such reorganization plan.

After such hearing, the State Commission shall, within sixty (60) days, approve in writing the plan if found satisfactory and so notify in writing the County Committee or County Committees concerned.

* * * * *

SEC. 7. (1) At any time after the date an approved plan is received by the county committee from the State Commission, a community school corporation provided for in such approved plan may be created and established by a petition stating that the signers request the establishment of the community school corporation, as provided in said approved plan, which petition shall be signed by fifty-five per cent (55%) or more of the registered voters residing within the boundaries of the community school corporation.

* * * * *

The clerk shall establish a record of his certification in his office, and shall return the petition together with his certification to the county committee. If the certification or certifications received from the clerk or clerks disclose that fifty-five per cent (55%) or more of the registered voters residing within the

boundaries of the community school corporation have signed the petition, the county committee shall publish in two (2) newspapers of general circulation within the boundaries of the community school corporation a notice stating that the steps necessary to the creation and establishment of the community school corporation have been completed, and setting forth (a) the number of registered voters residing within the boundaries of the community school corporation who signed the petition and (b) the number of registered voters residing within the boundaries of the community school corporation.

The community school corporation shall be created and come into being on July 1 or January 1 following the date of publication of said notice, whichever date is the earlier.

* * * * *

(2) If within ninety (90) days from the date of receiving an approved plan from the State Commission, a petition, in the form described in subsection (1) of this section, is not received by the county committee for any community school corporation set forth in the approved plan, then the county committee shall within ten (10) days thereafter, report such fact to the judge of the circuit court, who shall call a special election of the registered voters residing within the boundaries of each such community school corporation at the time of the next succeeding primary or general election, whichever is earlier, following such report by the county committee. Notice of such special election shall be given by publication. . . .

* * * * *

If a majority of the votes cast at such election are in favor of the formation of such corporation, a community school corporation shall be created and come into being on July 1 or January 1 following the date of publication of said notice, whichever date is the earlier.

(2a) In instances where the proposed school corporation reorganization plan approved by the State Commission involves

no change in territorial boundaries or in the board of school trustees or other governing body of a school corporation, other than a change, if any, in the time of election of board members, or the time such board members take office, such approved plan shall automatically come into being on either July 1 or January 1 following the date of such approval, whichever is earlier. In such event, no interim board member shall be appointed, the board members in office on such date shall continue to constitute the governing body of the school corporation until their successors are qualified, and the terms of their respective offices and their board memberships shall remain unchanged except to the extent the plan provides otherwise.

(3) If a proposal for the formation of a community school corporation is rejected by the voters at the election provided for in the foregoing paragraphs of this section:

(a) The county committee may direct the judge of the circuit court to resubmit the same plan at the next primary or general election called and conducted in the same manner to be held not earlier than one year from the date of the election at which the plan was rejected: Provided, however, That there shall be no more than two special elections held on the same plan of reorganization, without the approval of the State Commission.

(b) The county committee may devise a new plan of reorganization deemed more acceptable to the electors of the territory affected and submit such new plan to the State Commission for approval in the same manner as the original plan was submitted. If the new reorganization plan is approved by the State Commission, a special election shall be held as provided in subsection (2) of this section, and if the new plan is approved by the electors in the manner provided in subsection (2) of this section, the new corporation shall be established in the manner provided in said subsection (2) of this section.

(c) The judge of the circuit court may, notwithstanding the provisions of subsections (a) and (b) of this section, dis-

charge anyone or all of the nine members of the county committee appointed by the judge of the said circuit court pursuant to section 5 of this act and may select another person or persons to fill the vacancy or vacancies thereby created without regard to the qualifications required by subsection 1 of section 5 of this act. Thereafter said newly appointed county committee shall have all of the rights, powers and duties of the original county committee appointed under this act, but shall not be bound by any plan adopted by the original county committee (as amended by Acts 1961, ch. 302, § 1).

* * * * *

[20]SEC. 9. (1) Every community school corporation which shall be established pursuant to the provisions of this act, when validly organized and existing, is hereby declared to be a body corporate and politic and may sue and be sued, and may acquire, hold, and convey real and personal property necessary to its establishment and operation (as amended by Acts 1961, ch. 302, § 2).

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20. Codified as IC 20-4-1-26(1).

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-468

THE METROPOLITAN SCHOOL DISTRICTS OF LAWRENCE, WARREN AND WAYNE TOWNSHIPS, MARION COUNTY, INDIANA; THE METROPOLITAN SCHOOL DISTRICT OF DECATUR TOWNSHIP, MARION COUNTY, INDIANA; THE FRANKLIN TOWNSHIP COMMUNITY SCHOOL CORPORATION, MARION COUNTY, INDIANA,

Appellants,

vs.

DONNY BRURELL BUCKLEY AND ALYCIA MARQUESE BUCKLEY, BY THEIR PARENT AND NEXT FRIEND, RUBY L. BUCKLEY, ON BEHALF OF THEMSELVES AND ALL NEGRO SCHOOL AGE CHILDREN RESIDING IN THE AREA SERVED BY THE ORIGINAL DEFENDANTS; UNITED STATES OF AMERICA, ET AL.,

Appellees.

ON APPEAL FROM, OR IN THE ALTERNATIVE ON PETITION FOR WRIT OF CERTIORARI TO, THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

APPELLANTS' REPLY BRIEF TO "MOTION TO DISMISS APPEALS AND BRIEF IN OPPOSITION FOR RESPONDENT BOARD OF SCHOOL COMMISSIONERS OF THE CITY OF INDIANAPOLIS."

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INDEX.

CITATIONS.

Cases.

	PAGE
Keyes v. School District No. 1, 413 U. S. 189 (1973) ...	2
Milliken v. Bradley, 418 U. S. 717 (1974)	2
Washington v. Davis, 48 L. Ed. 2d 597 (1976)	4

Publications.

Bureau of the Census, General Demographic Trends for Metropolitan Areas, 1960 to 1970, Rpt. PHC(2)-1 ...	2
Bureau of the Census, Social and Economic Characteristics of the Population in Metropolitan and Non-Metropolitan Areas: 1970 and 1960, Rpt. P. 23 No. 37	2
Taeuber, Negroes in Cities (Aldine Publishing Company 1965)	2

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ARGUMENT.

This brief is filed under Rule 24, paragraph 4, in response to "Motion to Dismiss Appeals and Brief in Opposition for

Respondent Board of School Commissioners of the City of Indianapolis" (IPS). In the motion and brief, IPS asserts that the opinions below are based on a unique fact situation unlikely to reoccur and that Appellants have failed to give accurate information regarding the record (by which it apparently means the lower court opinions). (IPS 13)*

In fact, the Indianapolis metropolitan area is typical of metropolitan America. In the period 1950 through 1970 and beyond, the major metropolitan areas in America have been typified by major and continuing shifts of both black and white populations from rural to metropolitan areas, substantial suburban growth, a growing concentration of blacks in the inner cities and adjacent suburbs, and a racial disparity between the inner core subdivisions compared with those nearer the periphery.**

This Court in *Milliken* v. *Bradley*, 418 U. S. 717 (1974), held that these facts, even when accompanied by segregation occurring within the central city, are not a constitutional predicate for an interdistrict remedy. Both courts below to the contrary have held that if segregation has occurred in a single district, then the State, if it makes any change in the political structure of the area, has an affirmative duty to create a racial balance in school enrollments among the existing school districts.

The alleged inaccuracy in Appellants' brief asserted by IPS, lies in a failure to set out certain pertinent language from the District Court's opinion showing the basis for its holding (IPS

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* IPS and Appellants Briefs will be referred to as "IPS ....." and "Law. .....," respectively.

** *Keyes* v. *School District No. 1*, 413 U. S. 189, 223, n. 9 (1973) (Powell, J., concurring).

Milliken v. *Bradley*, 418 U. S. 717, 756, n. 2 (1974), Stewart, J., concurring).

Bureau of the Census, Social and Economic Characteristics of the Population in Metropolitan and Non-Metropolitan Areas: 1970 and 1960, Rpt. P23 No. 37, Table A.

Bureau of the Census, General Demographic Trends for Metropolitan Areas, 1960 to 1970, Rpt. PHC(2)-1, pp. 3-4 (1971).

Taeuber, Negroes in Cities (Aldine Publishing Company 1965) pp. 12-13, 125, 127-128, 152-153, 162-165.

13). In fact, that language is part of a larger excerpt from the District Court's opinion set out in its entirety at pages 9 and 10 of Appellants' jurisdictional statement, and shows with clarity that Court's disregard of *Milliken*. It is as follows:

> "The evidence clearly shows that at the time of the passage of the Uni-Gov Act in 1969, various annexation plans and school consolidation plans had bogged down on the local level because of the aforementioned opposition of the suburban school corporations within Marion County, and their patrons. However, the General Assembly of Indiana, with its members elected on a state-wide basis, was not, or should not have been, subservient to local pressures, and undoubtedly could have legislated a county-wide school system for Marion County as easily as it legislated a county-wide civil government. Under existing law, both Federal . . . and the law of Indiana . . . it had a duty to alleviate the segregated condition then existing in IPS. When the General Assembly expressly eliminated the schools from consideration under Uni-Gov, it signaled its lack of concern with the whole problem and thus inhibited desegregation with [sic] IPS.
>
> "The Court finds that the establishment of the Uni-Gov boundaries without a like re-establishment of IPS boundaries, given all of the other facts and circumstances set out in this and former opinions of this Court, warrants a limited interdistrict remedy within all of Marion County, Indiana, as hereinafter described." (A40-A41.)

This is not a finding that the passage of the 1969 Uni-Gov legislation (1) caused the pre-1969 segregation in IPS, (2) created the relatively fixed nature of the school subdivision boundaries in Indiana and in Marion County in particular, or (3) restricted the expansion of IPS. The predicate for the District Court's remedy is the failure of the Indiana legislature, while legislating civil governmental reforms, to legislate affirmative interdistrict measures to alleviate segregation occurring within a single district, IPS. The failure to legislate the interdistrict remedy becomes the basis for the interdistrict remedy itself—a doctrine nowhere found in *Milliken*.

Similarly, the Court of Appeals' majority recognized that the boundaries of IPS had not expanded under pre-1969 Indiana law (Law. A15), and that the 1969 Uni-Gov legislation and the school reorganization procedures which preceded it by several years were carried out for valid non-racial motives (Law. A10, A13-A14, and A17). It predicated affirmance, however, on the State's failure to include interdistrict school measures within Uni-Gov in 1969 to remedy the segregation in student assignment which the District Court first found in 1971 to have existed for many prior years in the more heavily black IPS. This is an inappropriate basis for a remedy under both *Milliken* and *Washington* v. *Davis*, 48 L. Ed. 2d 597 (1976).

Growth and change are the crucial characteristics of metropolitan America. While we think the courts below are incorrect, the issue they raise, and the uncertainty and social conflict it creates, will not be resolved in the Indianapolis area, or in many other metropolitan areas, until this Court speaks authoritatively once again.

Respectfully submitted,

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